

MONTANA LEGISLATIVE HISTORY

Chapter 166 19 95

Bill H _____ S 284 Original bill & history 1 c

H. Committee on St. Admin

Hearing Date(s) 3/01 1 c

3/02 1 c

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_____ c

Date Out _____ c

S. Committee on Bus. + Ind

Hearing Date(s) 2/07 1 c

2/08 1 c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes 1 No

Committee _____

Report _____

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SB 283 INTRODUCED BY JABS

REVISE TYPE OF VEHICLE COMBINATION USED FOR HAULING RAW LOGS
THAT IS SUBJECT TO LENGTH RESTRICTIONS

2/01	INTRODUCED		
2/01	FIRST READING		
2/01	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/16	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED		
2/18	2ND READING PASSED	50	0
2/20	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO HIGHWAYS & TRANSPORTATION		
3/10	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED		
3/24	2ND READING CONCURRED	96	3
3/25	3RD READING CONCURRED	96	2
	RETURNED TO SENATE		
3/28	SIGNED BY PRESIDENT		
3/28	SIGNED BY SPEAKER		
3/28	TRANSMITTED TO GOVERNOR		
3/31	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 313		
	EFFECTIVE DATE: 10/01/95		

SB 284 INTRODUCED BY VAN VALKENBURG, ET AL.

DIRECT PUBLIC SERVICE COMMISSION TO USE A MARKET COMPARISON
METHODOLOGY WHEN DETERMINING REASONABLENESS OF COST OF
COAL OR OTHER BOILER FUEL PURCHASED BY A REGULATED PUBLIC
UTILITY FROM ITS AFFILIATE

2/01	INTRODUCED		
2/01	FIRST READING		
2/01	REFERRED TO BUSINESS & INDUSTRY		
2/07	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED		
2/10	2ND READING PASSED	40	9
2/11	3RD READING PASSED	42	8
	TRANSMITTED TO HOUSE		
2/13	FIRST READING		
2/15	REFERRED TO STATE ADMINISTRATION		
3/01	HEARING		
3/02	COMMITTEE REPORT—BILL CONCURRED		
3/03	2ND READING CONCURRED	89	9
3/08	3RD READING CONCURRED	89	10
	RETURNED TO SENATE		
3/11	SIGNED BY PRESIDENT		
3/11	SIGNED BY SPEAKER		
3/13	TRANSMITTED TO GOVERNOR		
3/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 166		
	EFFECTIVE DATE: 03/17/95		

SENATE BILL NO. 284

INTRODUCED BY Va. Valtersburg Cole Beck
W. Ryan Robert M. Hanson HARP M. Hanson
John Johnson Timothy K. Kelly Benedict Bell
 A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE PUBLIC SERVICE COMMISSION TO USE A MARKET COMPARISON METHODOLOGY WHEN DETERMINING THE REASONABLENESS OF THE COST OF COAL OR OTHER BOILER FUEL PURCHASED BY A REGULATED PUBLIC UTILITY FROM ITS AFFILIATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. For the purposes of [section 2] and this section, the following definitions apply:

- (1) "Affiliate" means a corporation or other entity wholly owned or controlled, directly or indirectly, by the public utility or by a corporation or other entity that wholly owns or controls, directly or indirectly, the public utility.
- (2) "Different supplier" means a fuel supplier that is not an affiliate of the public utility that is subject to commission review under [section 2].

NEW SECTION. Section 2. Evaluation of coal or other boiler fuel costs. (1) The purchases of coal or other boiler fuel for the generation of electricity by a public utility from a fuel supplier that is an affiliate of the public utility is subject to review by the commission to enable the commission to determine whether the costs incurred by the public utility are reasonable.

(2) In determining whether the costs incurred are reasonable, the commission shall compare the costs incurred by the public utility to the costs that the public utility would have incurred if the coal or other boiler fuel had been purchased from a different supplier under similar contract terms.

(3) The commission may disallow recovery in the rates charged by the public utility of any amount by which the costs incurred exceed the amount that the commission determines to be reasonable based on the comparison required under subsection (2).

NEW SECTION. Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified

1 as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to [sections 1 and
2 2].

3

4 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

5

-END-

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on February 7, 1995, at
8:00 a.m.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Ken Miller (R)
Sen. Mike Sprague (R)
Sen. Gary Forrester (D)
Sen. Terry Klampe (D)
Sen. Bill Wilson (D)

Members Excused: N/A

Members Absent: N/A

Staff Present: Bart Campbell, Legislative Council
Carla Turk, Recording Secretary, in absence of
Lynette Lavin, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 284, HB 243
Executive Action: SB 224 DO PASS AS AMENDED
HB 243 BE CONCURRED IN

HEARING ON HB 243

Opening Statement by Sponsor:

WILLIAM "RED" MENAHAN, HD 57, Anaconda, presenting HB 243, which
came about to equalize the time to renew licenses. He stated
other professions had a year to renew their licenses if they
missed the date. REP. MENAHAN told the committee this
legislation allowed electrical contractors the same amount of
time, a year, to renew their licenses.

Proponents' Testimony:

Ron VanDiest, representing Montana State Electrical Licensing Board, said the Board had requested him to come up to this hearing in support of this bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

SEN. GARY FORRESTER asked REP. MENAHAN why the amendment was added on lines 21 and 22. REP. MENAHAN stated the reason was because they had the license and must pay the fee. SEN. FORRESTER restated his question of why this appeared to be an amendment. REP. MENAHAN said the House Committee had added the amendment and he was unaware of the addition.

Closing by Sponsor:

REP. MENAHAN offered no further remarks in closing, but thanked the committee.

HEARING ON SB 284Opening Statement by Sponsor:

SEN. FRED VAN VALKENBURG, SD 32, Missoula, stated SB 284 was an effort to resolve a long-standing dispute between electric utilities in this state and the Public Service Commission (PSC). He said specifically, over the course of the last 15 years, the PSC had, in various rate cases, penalized utilities by disallowing from inclusion of their rate base, a portion of costs of coal used in the process of electricity generation, which they purchased from related subsidiary companies. He claimed most recently the PSC denied the Montana Power Company (MPC) recovery of 20% of the cost of coal, approximately \$7 million, purchased from its' subsidiary, Western Energy, because the PSC said non-regulated Western Energy was too profitable. He contended Montana Power appealed the PSC's ruling to the district court.

SEN. VAN VALKENBURG said because the courts in reviewing appeals from PSC rulings were bound by factual determination made by the PSC and limited to deciding whether the utility can prove by clear and convincing evidence that the PSC committed an error in its' decision, the court ruled against MPC without considering the underlying justness of the decision or its long-term affect on the company or others affected by the decision. He asserted, the PSC was correct to closely scrutinize transactions between utilities and their subsidiaries assuring excessive costs were

not included in rates; however, scrutiny didn't mean legitimate costs were denied. **SEN. VAN VALKENBURG** stated Montana Power strongly believed legitimate costs had been denied and its' executives and employees would make that case today.

SEN. VAN VALKENBURG remarked some said the legislature had no business entering into this dispute, nothing could be further from the truth. He stated the PSC was a creature of statute and it would not even exist were it not for a legislative Act. He maintained what was at issue was a policy question, much like hundreds of policy issues that came before the legislature on a myriad of subjects. He said in some respects, the issue the committee was being asked to decide could be called complex. He expressed in another respect, the issue was very simple and straight forward.

SEN. VAN VALKENBURG related basically, the question was should the PSC use a market comparison test in determining whether a utility was paying too much for coal sold to them by its' subsidiary; a method the Montana Supreme Court had said would be preferable, or rather, applied a very complex return on equity formula to a non-utility operation in determining whether the non-utility was profiting too greatly at the utilities expense. He conveyed the choice not only affected what electric utility customers were charged, but had a profound affect on the future of one of Montana's largest companies and the lives of hundreds of dedicated employees.

SEN. VAN VALKENBURG's decision to sponsor this bill was not made lightly, nor without a pretty good understanding of the criticism he would be subjected to for taking the side of the power company. As a result he studied this issue at length and learned a good deal about the regulatory process. One of the most interesting things he learned was how the PSC treated the issue of the cost of reclaiming lands mined for coal. He related others would provide the committee with more detail, but the PSC's approach was a glaring example of how the PSC could manipulate the return on equity methodology to produce any result the PSC wanted in disallowing coal costs.

Another important thing **SEN. VAN VALKENBURG** noted was MPC had virtually no role in setting the price it paid Western Energy for the coal the MPC purchased. He said that price was actually set by the price paid by much larger utilities, such as Puget Sound Power & Light, Portland General Electric, Washington Water Power and Pacific Power & Light. He explained in other words, the market, rather than a monopoly sets a price for this coal.

Finally **SEN. VAN VALKENBURG** suspected the committee would hear from electric consumers, both large and small, that passage of this bill would result in a significant rate increase to them and as such, the committee should not vote in favor of the bill. He asserted the committee should know first this bill had no retroactive application and even if all the disallowed costs in

the last rate case were allowed in a future rate case, it would only result in a 2% increase for MPC's customers, which amounted to about \$.75 a month for the average residential customer and that was because someone had received an advantage from another's disadvantage in previous years and was no reason to continue such an injustice.

Proponents' Testimony:

Jack Haffey, Vice President, Montana Power Company, was here to testify in support of SB 284. He stated **SEN. VAN VALKENBURG** gave a fine presentation of this bill, but he wanted to share with the committee a few of the reasons in more detail as to why MPC finally decided it was time to place this question in front of the legislature. **Mr. Haffey** planned to give a bit of historical perspective, to talk about the policy question, and the nature of the question. He also wanted to talk about fairness when it came to utility regulation and whether fairness existed when the method and the approach the PSC had been using for 15 years was applied to this particular issue. He also planned to talk a little about the market standards for determining reasonableness of coal costs for electric utilities and briefly what MPC must do if unable to get what they expected, which was policy fairness from the State of Montana.

Mr. Haffey related the historical perspective was Montana Power purchased coal reserves for the first time ever in 1959 from Northern Pacific. They purchased the Colstrip site and about 70 or 80 million tons of coal reserve. He related during the early 1960's MPC went on to purchase more coal reserves until they had about 840 or 850 million tons by the mid-1960's. He maintained in 1966, Western Energy was formed as a subsidiary to Montana Power Corporation, and specifically formed to provide coal to the market commercially. He expressed MPC also anticipated at the time it would need coal to provide fuel for electricity.

The policy question **Mr. Haffey** remarked was essential for the State Legislature to delegate utility regulatory authority to a commission like our PSC. He alleged regulation of utilities as a general proposition was complex and it deserved and needed attention in order to see that public interest was served. He insisted sometimes, it's important for citizens, like Montana Power, to bring to the legislature its' concerns about the way policy was being carried out through the regulatory agent. He stated for 15 years the MPC had been working with the PSC to try to get policy fairness on this issue that **SEN. VAN VALKENBURG** had outlined for the committee.

Mr. Haffey explained there were two or three attempts to raise the issue once they didn't get the fairness they sought from the commission to the courts. He stated the courts had said state law gave the PSC the latitude; the discretion to choose to use the method they were using. So, he said, they had been unsuccessful with the courts. He announced they had persistently

tried to solve the issues by placing information in front of the PSC and in front of the courts. He maintained they even tried to settle the issue, but were unable to do so. They decided it finally was time to change the law to get a fair state policy written into the law as to how the commission would look at the reasonableness of the question.

Mr. Haffey explained utility regulation was very simple in terms of its reason for existence. He said it existed to ensure public interest was satisfied by balancing the interest of suppliers of electricity or natural gas in the interest of consumers. He said in that balance there had to be fair consideration of the needs and interests of both those concerns and that fairness, carried out in the method the PSC had been using, was the question they had struggled with over the years. They believed it wasn't.

Mr. Haffey reported the commission down through the years had institutionally embraced the way they decided this issue. They used a method that looked at the profitability of Western Energy power coal suppliers, looked at their profitability to determine whether fuel costs were purchased through MPC were reasonable for inclusion in rates. He related for that rate of return, the profitability method was difficult to apply to a coal firm, It worked for an electric facility because that was how rates were designed.

Mr. Haffey said coal mines exist really to go out of business; a coal mine puts their equipment in place at the start of business and then used it up as it mined the coal, until the coal was all mined out and the property was depreciated. He said what that did was the profitability increased over the years and it was not unusual to see a coal mine firm at higher profitability than was normal. He stated all those years together, considered as one proposition in terms of the present value of that firm, it was in the range of 10%-12% and 15%-18%. He said it was acceptable when the years were put together; the point was, it wasn't workable.

Mr. Haffey stated in 1985 they got all of their plants on-line; Colstrip 1, 2, 3 and the Corette Plant in Billings, and those were purchased for \$700,000. He said over the years until 1994, the same tonnage was being mined; the same invoice to us from Western Energy was being charged, about \$35 million, but the disallowance grew from \$700,000 to \$2.6 million to \$7 million. 20% of what they paid Western was not includable in the rates. HE maintained if Western was having a good year, then MPC's fuel costs were unreasonable, and if Western was having a bad year, then MPC's fuel costs were reasonable. He thought that was the best way to explain the irrationality of the relationship. The approach used could produce a result which said they were not paying enough to Western with their fuel costs, and he said this rate of return profitability had flaws they thought were unfair.

Mr. Haffey said there was a market for coal and in the early 1970's, when the decision was made to build a plant at Colstrip,

and the people who decided to build the plant, i.e. Puget Sound Power and Light, Montana Power, Portland General Electric and three other utilities, all had a choice. He declared the choice was to put the plants there with this coal, or put the plants elsewhere and transmit electricity a long ways, and the heart of their choice was where was the lowest cost. He announced they decided to put the plants there where Western Energy didn't have a competitive advantage; they had to try to sell coal to those potential plants at a competitive price.

Mr. Haffey related in the first instance it was a competition for sale of coal. MPC only purchased 20% of this coal. They were not a dominant buyer. They didn't play a role in setting the price for the coal. He declared Colstrip units 1 and 2 were owned by Montana Power and Puget; Puget negotiated with Western Energy and set the price. He stated that was being arbitrated now. MPC did not play a role in the negotiations. He maintained for units 3 and 4, Puget, with the other owners from the very start, had an arbitrated price in the contract for the coal sold to those plants. MPC did not play a role in price determination. MPC had nothing to do with the price. He expressed there was no "sweetheart" deal. MPC had nothing to do with pricing of 3 and 4, or for 1 and 2. He asserted those things were relevant in finding out whether they could get the coal cheaper down the street or not, whether they had a sweetheart arrangement, or a close arrangement with Western. He declared the question was answered in that MPC was not even involved in the deal.

Mr. Haffey added the other companies mentioned had not had disallowances of their fuel costs. He stated they put their fuel costs in rates in their own states for the purchases of coal from Western Energy, only MPC had the disallowance. He also said each plant, Colstrip 1, 2, 3, and 4, had always had among the lowest fuel costs for electricity generation of all coal fired steam plants in the nation. He reported the end result was one that had some of the lowest fuel costs in the nation and that was a relevant point. He conveyed the final point was the reality of the issue and whether they could get it resolved by a policy statement from the legislature or not. He said MPC trusted and hoped this committee would be able to pass SB 284.

REP. BILL RYAN, HD 44, Great Falls, spoke today on behalf of **IBEW Local 44, International Brotherhood of Electrical Workers.** **REP. RYAN** read a letter of testimony from **Stan Dupree, Business Manager and Financial Secretary, Local 44 IBEW, EXHIBIT #1.**

Larry Brown, Equipment Operator, Western Energy Company, stated he was here today in support of SB 284, because he thought it offered a fair method to evaluate the price of coal to MPC and other utilities. He stated it was not just the burden of proof from MPC onto the PSC, for proof of rate increases and it did not automatically send \$7 million allowance back into the race for an increase. He conveyed all this bill did was create a fair market

value method of evaluation for the PSC; that was the reason the committee should support SB 284.

Dianna Tickner, Manager of Contract and Business Administration, Western Energy Company, was here today to discuss their coal business and to support SB 284. She stated the process used by the Montana PSC was to disallow coal cost recovery by MPC which was damaging to the interests of Montana. She said it threatened their ability to remain in the Montana coal business. She stated it was very important SB 284 was passed, as this would be the start of inserting fairness back into the rate making process.

There were several areas **Ms. Tickner** wished to cover to show why Western Energy hoped the committee passed SB 284. She said their coal business began in the 1960's as a non-regulated business. She stated the first and foremost point was to sell coal into the rapidly growing national market for western coal. She said they took advantage of this market to sell coal to customers, some far-removed from Montana's borders. She maintained prior to the start of the Colstrip units, MPC's purchases averaged less than 15% of Western's total sales, and sales to the Colstrip units came later at prices reflecting the coal market at the time.

Ms. Tickner stated they were not forced to sell to MPC and could easily build their mine around other market opportunities. She said sales to MPC in Montana had created substantial economic prosperity in the form of employment, property taxes, export of power, dividends to their many Montana based shareholders and very low power rates. She said the economic multiplier of this business in Montana was enormous and prosperity was threatened by the actions of the PSC. She asserted PSC was questioning whether they had ever entered into agreements to supply coal; none of the other Colstrip partners, state regulators, had disallowed their coal costs from the Colstrip needs.

Ms. Tickner stated in 1994 the penalty was \$7 million, which amounted to about \$2.50/ton purchased by the MPC. She declared since the coal penalty arbitrarily increased as they depreciated their investment, their future business scenario was unworkable since at some point there would be no profit. She insisted MPC had to reconsider whether it could continue operating the Rosebud Mine under those circumstances.

Ms. Tickner also pointed out state government didn't seem able to decide whether the coal price was too high or too low. In 1992, Western settled a dispute with Department of Revenue (DOR) for approximately \$2 million, because the DOR imputed a higher price for coal supplies to MPC owned units when calculating the various state production pacts. She quoted the DOR, from a letter dated May of 1988, "the value of the coal was imputed since the coal sold in the non arm's-length agreements was priced lower than the market price established in similar agreements with Northern State Power and with Wisconsin Power and Light". She said a fair

market comparison of nationally delivered coal prices showed MPC and the ratepayers received a very good deal on their coal.

Ms. Tickner declared in 1994 there were roughly 428 coal fired power plants nationally. She insisted Colstrip 1 and 2 paid less than one-half the national average for fuel costs and was below 6%; likewise, Colstrip 3 and 4 in Corette were also in the top 20 lowest fuel costs nationally. She contended there were roughly 40 mined off plants nationally; Colstrip 1 and 2 paid the second lowest price among the mined off plants and Colstrip 3 and 4 ranked 7th on those mined off plants. She stated during the past 15 years Colstrip units 1 through 4 had paid prices at or below the average paid by the rest of Western Energy's nonaffiliated coal purchased from the Rosebud Mine and Corette had been lower since about 1987.

The PSC argued that Western Energy was a monopoly reported **Ms. Tickner**. She declared basic business economics showed prices of products above competitive market levels, in fact, MPC paid far below the national market levels. She stated there was much more at stake; however, than this argument, there was a core Montana industry at stake. She conveyed if they were forced out of the coal business, all segments of society would suffer, including the ratepayers who the PSC was supposed to be protecting. The price of coal delivered to MPC was determined in the market and could only fairly be compared to the market. Passing this bill would be a step in that direction and **Ms. Tickner** presented two maps, a graph, a copy of a letter to Western Energy Company dated April 27, 1988 with accompanying schedules, **EXHIBIT #2**.

John Alke, Attorney, Montana/Dakota Utilities Company (MDU), contended, like MPC, MDU had a coal mine subsidiary, the Knife River Mine Company. He had litigated MDU's PSC cases here for 15 years and 3 of those cases, a disallowance of coal expense was proposed based on a rate return of \$1.50. He stated as the committee considered this bill, keep in mind the rate of return methodology used by the PSC was subject to growth manipulation. In the 1983 case, which he litigated for MDU, the PSC determined the Knife River Coal Mining Company was earning approximately 20%, based on the determination, it disallowed \$347,000. He expressed, the next electric rate case he litigated for MDU, a 1986 case, the PSC determined the profitability of the Knife River Coal Mining Company had decreased to 18%. Did the coal disallowance go down? Of course not, it went up. How did the PSC do it? He said in the 1986 case, they simply decreed to lower permissible rate of return to the coal mining company.

Mr. Alke portrayed, imagine your spouse asking you to buy a TV, telling you the model, the brand, and you visit all the shops in your town; you dickered and received the best price, and you came back with the TV. Your spouse asked where you purchased the TV, you stated "at Harvey's Appliance Store". Your spouse said, "you paid too much; Herb across the street did their financial statements last year and he told me they made 20%". No one in

this room would accept that lie. He said if the committee changed the hypothetical spouse to the PSC, changed TV's to coal, suddenly part of this room argued the logic was compelling. They used two arguments. **Mr. Alke** said TV's were in a competitive market and coal was not an arm's-length transaction; coal markets were extremely competitive. He said the assertion coal was sold in something other than an arm's-length transaction was in large part, untrue; the bulk of the coal Knife River sold was to the Bigstone and Coyote Generating Station. MDU had 25% share in Coyote and 23% share in Bigstone; the PSC had explicitly recognized the decision. He said those coal contracts were not negotiated by MDU in Knife River, but were negotiated by Knife River and the Ottertail Power Company. The most profitable coal sales at Knife River were to industrial plants in North Dakota, who **Mr. Alke** thought were sugar beet refineries.

Mr. Alke reflected the commissioned rate of return methodology, by calculating a permissible profit level for the entire company, effectively captured a portion of the profit from the industrial sales and flowed them back to the MDU customer as an artificial credit in utility rates. He said there was a critical assumption in the PSC's rate of return methodology. He said that assumption was the co-owner of the Colstrip generating station, the Coyote generating station, the Bigstone generating station, were willing to give Western Energy and Knife River a sweetheart deal so those companies, companies of which they had no financial interest, could reap the windfall; that assumption defied logic.

Mr. Alke stated in 1995 the Knife River Coal Mining Company would no longer be providing coal at Bigstone generating station. He stated Bigstone didn't comply as it was currently structured with the 1995 Federal Clean Air Act. Owners of Bigstone had a choice

{Comments: unable to hear tape clearly.}

or they could switch from Knife River Coal to Montana Coal. He said beginning in June of this year, the Bigstone station would be supplied by coal from Westmoreland, out of Montana, which put this entire debate in a fascinating prospective.

Mr. Alke litigated, 1981, a case for MDU, Westmoreland coal was one of the comparable coal companies used by the PSC. He said according to the evidence, the proponents of the rate of return methodology introduced in proceeding in 1974, Westmoreland had a return of 32.8%, in 1975 it was 39.8%, 1976 - 25.4%. What was Westmoreland's return now? don't know, but guess what; it doesn't matter. He said from here on out, if MDU filed an electric rate case, the reasonableness of the extent they incurred at the Bigstone generating station would be determined by examining the price they paid Westmoreland for coal compared to their next cheapest alternative. He stated at the same time and in the same case, the reasonableness of the coal extent at all of their other generating stations would be determined by one thing; the profitability of Knife River Coal Mining Company. He maintained

that kind of double standard was unreasonable, it was unfair, and why this committee should give **SB 284** a do pass recommendation.

Duane Ankney, a miner from Colstrip who worked for **Western Energy**, thought if **Western Energy** was not an affiliate of the utilities, none of the people would be here today. They would be going on the proposed methodology of comparable contract term. He related it was important that **Western Energy** was the only Montana owned coal mining company in the state. He urged a do pass on **SB 284**.

Jim Shaffer, a mechanic for **Western Energy Company**, stated he took the opportunity to visit with the PSC and the Montana Consumers Council. He said after visiting with those people, it became apparent to him the suppliers of fuel at MPC were being overly scrutinized. He urged any supplier of regulated utilities to do business on a fair market value basis.

Kelly Wiedrich, **Local 400, Operating Engineers**, announced today he was speaking only on his own behalf. He stated it seemed the whole business strategy of MPC, **Western Energy**, **Entech**, was based on "return of recovery" or "return on investment" scenario and didn't allow for incentive on part of the company or labor to try increased production, etc., that could possibly bring the consumer cost down. He thought a fair market scenario would allow for the consideration.

Joe Novasio, **Western Energy Company in Colstrip**, maintained he didn't wish to be redundant; however, he had been outside the room so didn't know what had transpired. He declared it was important to remember, **Western Energy** was the only Montana coal mine and it had been mining coal for 26 years. He had lived in Colstrip for 20 years and he hoped this business would continue, and would like the committee to pass this bill.

Russ Ritter, **Montana Resources**, stated they were not really here as a proponent, or an opponent. They had not really had a chance to look at the numbers that had been submitted. They wanted to reserve the right to take a look at those numbers to see what affect, like any business, they had upon their mining operation in Butte. **Mr. Ritter** wished to submit some written testimony to the committee prior to Executive Action.

Frank Crowley, announced he was here on behalf of **Bob Litle**, **Plant Manager, ASARCO**, who had been traveling out of state and **Mr. Crowley** had been unable to contact him about this bill. He said he was concerned about the impact on **ASARCO's** operation; however, like **Montana Resources**, they also wanted to reserve the right to submit testimony to the committee after they had the opportunity to communicate with **Montana Power Company**.

Opponents' Testimony:

Nancy McCaffree, Chairman, Public Service Commission, and also representing southeast Montana, expressed it was very important to keep MPC and other companies healthy. Ms. McCaffree read her written testimony, EXHIBIT #3.

Bob Anderson, Public Service Commissioner, District #3, offered a couple of points of a unique spectrum. This year Mr. Anderson served as President of their national association and had gotten acquainted with the "big picture", both what was going on in all the states around the country and also a sense of history in the origins of utility regulation from the early part of the century to today. He stated people had lost their sense of why utilities were regulated in the first place. He stated the reason was they were natural monopolies and the services they provided were in the public interest.

Mr. Anderson said in the early part of the century, up into the 1930's, the industry was very abusive. He stated companies used techniques that watered their stock, raised prices above what they had been and they got at the consumer. He maintained the legislatures in the nation established regulatory commissions to regulate as a substitute regulation for competition, because competition was absent. He stated over the years the regulation had been pretty successful. He announced the utilities had grown and prospered and ratepayers were paying a reasonable price.

Bob Anderson explained commissions in this country were charged with balancing the interests of the ratepayer and the company. Financial health of the company was important; important for customers to pay a just and reasonable rate. PSC's were charged with making that balance. He stated those companies were still a natural monopoly and human nature hadn't changed. He said it was still imperative for every monopoly to increase their revenue and increase their presence. They typically did that in rate cases that came to PSC and asked for increased revenue. Mr. Anderson said if they couldn't get it from the PSC and they saw an opportunity, they would try to get it from the legislature. He stated that was what the committee was seeing today.

A lot had been said about fairness, about jobs, but that wasn't what this bill was about asserted Mr. Anderson. He maintained this bill was about monopolies trying to increase their revenues and profits and they couldn't. He declared it was important to recognize the difference in the forums, between the PSC and the Legislature. He said in the legislature the committee had heard the arguments. He asserted in the PSC, they had due process, evidence, cross-examination; parties had to be accountable for what they said. He related in the legislative forum, parties were now accountable for what they said. He expressed much of what had been said today, would not stand up under cross-examination, and held accountable in a regulatory forum.

Mr. Anderson related the second point had to do with changes in the industry. He maintained nationwide, in fact worldwide, more

competition was coming into the industry, specially in the generation site. He maintained the utilities were faced with unprecedented challenges from competitors. He stated generation was being provided by independent car appraisers, new technology was coming in, and new regulatory policies were coming in to increase competition. He related every regulated utility was faced with the challenge of being competitive, even the MPC. He related MPC was in pretty good shape to withstand some pressure. He claimed bond ratings had been stable and trending upward at a time when the industry wide trend was down.

Mr. Anderson related MPC's rates were low and that was the best defense against competition and "stranded" investments. He said the best defense for the MPC was to maintain the rates as low as possible and not solidify uneconomical coal contracts. Wall Street had said the MPC's potential stranded investments were about \$30 million of over-priced coal contracts. He maintained it would be a mistake from a competitive point of view to raise the company's rates and solidify uneconomical aspects.

Joe Presley, President, Westmoreland Resources, Inc., declared he was appearing today in opposition of SB 284. **Mr. Presley** read his written testimony, **EXHIBIT #4.**

Bob Nelson, Consumer Council Representative, reported he was appearing today with mixed feelings. Several of those sponsors of SB 284 were people they had worked with over the past years; people whose opinions were respected. The Consumer Council; however, was mandated to represent consumer interests in dealings such as this. His office had for nearly two decades proposed and supported the rate of return methodology, which the PSC used in establishing reasonable coal prices and he expressed he had an obligation to be here today to engage in this important debate. He stated over the last couple weeks there was a rift in the debate that had gone on at PSC about this issue. He maintained, unfortunately, there wasn't enough time to go over all the ground that had been covered over the last 17 years and ground that had been covered in about a dozen PSC orders and seven court decisions. There were a few main topics **Mr. Nelson** wished to touch on generally. He also wanted to address some specific issues the other proponents had raised today.

Mr. Nelson stated the first general topic was the adjustments the CSC had adopted. He declared this was an approach based on solid regulatory series and applied to the facts gleaned from thousands of pages of testimony and data responses over the last 17 years. He said it withstood the test of time in decisions applied to MDU, FEC and PP&L. In fact, PP&L for the past 12 years no longer disputed this adjustment. He related there had been 7 court decisions, 3 Supreme court decisions, 4 district court decisions, as well as about a dozen PSC orders. He said those orders didn't come from just the current commission, but no less than 14 commissioners without any descent, and 7 of those former commissioners were also former legislators. He maintained this

adjustment had, after extensive evidentiary hearing, received very broad acceptance and was the approach SB 284 would prohibit.

Mr. Nelson stated the second point was whether or not the bill successfully established a market comparison. He declared both points must be considered. The PSC had always said with approval of the courts, market comparison was one of two things, and because of the vertical integration of the monopoly, the ability and the mining property, the PSC had thought it necessary to also consider processing reasonable cost census. He stated consider both the profits and the price of the coal. He said with respect to the price and the competitive marketplace methodology, that had been extremely problematic; in a long series of orders, the PSC had found there was no market with respect to coal.

Mr. Nelson read a brief excerpt from the most recent district court decision from Butte. The courts had found the adjustment legal, but not fair and he said that was far from the truth. The courts had found the adjustment resulted in a just and reasonable result. He reported most recently, Judge Sullivan, in the Butte District Court said in his order "MPC failed to demonstrate an arms length agreement, or a competitive marketplace when the contract was negotiated in the early 1970's when MPC purchased the coal right. MPC's early decision to take their generating facilities at Colstrip and to design the facility to specifically burn Western Energy Coal, gave Western Energy a market advantage that precluded a finding of an arms length agreement, or a competitive marketplace." The excerpt just read was consistent with the orders and court decisions he reviewed over the year.

Mr. Nelson said generally, the rate of return methodology supplied by the PSC was a fair approach; it allowed MPC to recover coal expenses generating a reasonable return, a comparable rate of return to other coal companies; it did not attempt to regulate Western Energy, but would generate a reasonable coal company return. With those three general areas of principles, he turned briefly to responding to some of those specifics discussed this morning. He related there was some discussion people had disagreed with the PSC in their treatment of reclamation property in the latest MPC order.

Mr. Nelson expressed the issue involved the inclusion of about \$80 million of the reclamation liability that Western Energy had to ultimately reclaim that mine. 1) The PSC did consider those reclamation costs; the company had not included any return on the \$80 million, which had been appropriate if it were to be included in the capital structures. 2) It was found that Western, even after the adjustment, did retain sufficient capitalization to pay for those reclamation costs. He said the issue was considered and it was on appeal and Judge Sullivan did affirm the PSC's findings that they had properly treated reclamation costs. He did state the issue was not whether the methodology was fair or not, the issue had been whether the correct adjustment had been \$7 million or \$5.6 million. There had been a claim the method

was inherently unfair because the return to Western Energy would naturally increase over the years and so the adjustment would grow over time. Unfortunately, they could not share the statistics, but looking at the historical plans and records of Western Energy, the adjustment had declined.

Mr. Nelson declared there had been a claim MPC didn't play a role in setting the prices Western Energy charged to MPC; although, technically that argument could be made, the fact was when the decision was made to build the plant, it was MPC who made the decision which established the relationship between Western Energy and the generating facilities. He declared the partners hadn't the same freedom they had from day one to look for competitive coal bids. He related technicians made the finding and the courts had sustained that finding. He stated there was a claim Western Energy charged some of the lowest coal fuel costs to MPC and he was unsure as to whether that was true, but it may be true. He declared it was also true MPC had some of the lowest energy rates in the nation. He said that didn't necessarily mean they could reasonably raise those costs, or any of the other allowances the PSC made in the rate cases were improper, but because of the inherent monopoly situation **Commissioner Anderson** mentioned, the public had seen fit to regulate those monopoly enterprises and to set their rates and their costs based on the costs they actually faced.

In conclusion, **Mr. Nelson**, remarked he had not discussed any of the language problems the bill itself raised and there were some; most notably, the apparent inability of the underlying contract. He said the current approach had received very broad acceptance, it was a fair methodology. The market price approach was the only approach the PSC could apply, which was found impossible to apply, because of the facts they had with respect to MPC.

Duncan Wohlgenant, Manager of Conoco's Refinery in Billings, announced they were in opposition of SB 284. He declared their opposition was based on the fact of the cost position the bill represented; in 1993 they paid \$7.5 million for electricity and \$6 million for pipelines. He stated the forecast for 1995, electricity would be up to about \$9.4 million and the pipelines would remain at about \$7.5 million, so the total is merely \$17 million. He didn't know the exact impact of this bill, but he had heard the figure of 2%, well over \$300,000 based on those figures. They continued to invest in Montana. They just spent another \$80 million at the refinery the past year, providing additional jobs and improving the environment. They expected to pay more for electricity and power with the investment and had no quarrel with that, but they had a problem with the increase in their base costs. He maintained like all businesses, they had been working to get their base costs down and remain competitive and viable. Painful work affected people on the job. He had heard a comment that impact of this bill to Conoco would be small change; it wasn't small change. He said they were under strong pressure to reduce costs and SB 284 would affect them severely.

Jim Morton, Human Resources Development Council, in Missoula, contended he was not here to suggest they make MPC an unhealthy company. He had been involved with MPC on many different collaboratives around the industrial business, low income and consumer groups and he was proud of those collaboratives. In fact, people in other parts of the country had suggested those were models, so he was pleased the company was healthy; however, they had a fundamental disagreement with this bill. He declared it created a huge transfer of wealth, \$7 million a year over twenty years. **Mr. Morton** said a person didn't need to be a PHD economist or an electronic wizard to figure out what that did to major business.

Mr. Morton stated other businesses in this state also provided good jobs and they were also good neighbors. He stated this bill drifted away protection that had been in place for decades. He related an article in an electric journal had discussed stranded investments **Commissioner Anderson** had referred to. He stated the article suggested to people who invested in those contracts, they were overvalued; it warned investors on Wall Street "don't pay this much". Their own partners were in arbitration over the high cost. He announced that was disturbing to him because this bill stated the people in Montana should take the 'hit, they should be nailed for their need of excessive rate of return. He urged the committee to be straight with the people of Montana, if they decided they had been grievously treated. He said this was a tax bill as it was taxing the people in Montana so one industry could benefit; when there was a huge transfer of wealth, call it a tax.

Tom Schneider, formerly served as PSC Chairman in the 1980's, stated he served on the Commission from 1977 through 1984, during the time of the blood baths which surrounded Colstrip. He stated it had been a long time since he testified before the legislature and was really glad about that. He said the last several years there had been significant progress made in terms of working together with MPC on good, sound, energy strategy for the company and for the State of Montana. He announced this particular bill; however, really was a throwback to the time when they were up here slugging it out on exempting Colstrip 3 and 4, arguing about construction work in progress ought to be included in rate base, arguing about future test years, and all of those ratemaking details ought to be settled here in the legislature.

Mr. Schneider thought that was not a good time for Montana, it wasn't a good time for the legislature, and it wasn't a good time for MPC. He urged the committee, very strongly, to look at what the PSC had done in considering consistently and rejecting consistently the arguments made by the MPC. The courts, from the District Court in Helena, to Butte, to Billings, had all said "we have considered it, we have looked at it and it is fundamentally fair; there could be a different way of doing it, but this was reasonable" and the Supreme Court had said the same thing. He related they had considered it and had rejected this argument by the MPC. **Mr. Schneider** urged the legislature to do the same

thing. He recognized that management had the responsibility to pursue all their avenues and exhaust all the legal remedies, but urged a do not pass on this special interest legislation, it was detrimental, and a very bad precedent in terms of injecting the legislature into this particular issue.

Debbie Smith, Sierra Club, said they opposed SB 284. She said the PSC had dealt with this issue for over a decade and had consistently decided against what MPC would like to do; they were a regulated utility, they had a monopoly position in this state and in the country, and they had very inexpensive energy costs which made it difficult for any private competitors to compete. She urged SB 284 be tabled.

Chet Kinsey, Montana Low Income Coalition, announced they were opposed to this bill. They thought this bill gave the MPC an automatic way of raising rates. He said most of those in the low income bracket could not afford higher rates.

Ann Hedges, Montana Environmental Information Center said they believed the integrity of the PSC was at stake in this decision and they urged a "do not pass" on SB 284. She related there were some very poignant guest editorials seen around the state and she gave the committee an article from the Billings Gazette by Chet Blaylock, EXHIBIT #5 and urged the committee to read the article.

Edmond Caplis, Executive Director, Montana Senior Citizen's Association, expressed they were in strong opposition to SB 284. They believed it was a rate increase and it was co-opting the PSC process. They urged the committee to table this bill.

J. V. Bennett, Montana Public Interest Research Group, said, as a consumer advocacy group, they opposed SB 284 because they believed it was bad for consumers and bad for Montana business. He presented a copy of his written testimony, EXHIBIT #6.

Informational Testimony: None.

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT asked **Nancy McCaffree, PSC**, why the PSC was disallowing coal costs because they claimed the price was "too high", although the DOR stated the price was set "too low" and made the company pay more severance tax. **SEN. BENEDICT** was trying to figure out philosophically, where that was coming from. **Ms. McCaffree** could not understand where the severance tax part was coming in.

SEN. BENEDICT referred that question to **Bob Nelson**, who stated they had nothing to do with the severance tax. They only were dealing with the proper price of coal. **SEN. BENEDICT** stated he would like this question answered and said PSC was not addressing the question. **Ms. McCaffree** could not answer the question.

SEN. BENEDICT asked **Mr. Nelson** what sufficient capitalization of reclamation (market value) costs would be on their drag line.

SEN. BENEDICT stated the committee was hearing from both sides and he wanted to try to figure this out; where he set the value on the drag line, he understood it was \$15-\$18 million. **Mr. Nelson** stated he could not tell the committee what the value would be, but would accept the amount of \$15-\$18 million.

SEN. BENEDICT said from what he understood, if they sold the drag line it was worth \$1.5 million. He would like to know why there was such a variation between sufficient capitalization of the value of the drag line the PSC set and the actual market value if they sold it. **Mr. Nelson** explained again he was not familiar with the exact valuation; however, he said through the course of an evidentiary hearing, if the PSC was setting an incorrect valuation, something that did not need a true valuation, he expected the MPC had the opportunity to disapprove the valuation.

SEN. BENEDICT inquired from **Mr. Nelson**, that he had set himself up as someone who had done a tremendous amount of study and really had gotten into this thing, but was unable to answer his questions and that concerned **SEN. BENEDICT**, and could **Mr. Nelson** respond; he answered he was unsure what **SEN. BENEDICT's** question was, although, if **SEN. BENEDICT** thought he misled him in any way, he certainly apologized. The point he was trying to make was this issue had been around for about 17 years now and in the process had resulted in the methodology the PSC was now using, he knew how the process worked, and he knew there had been extensive testimony. He had read some of the testimony; although, not all of it because it dated back to before his time. He knew there had been a lot of testimony, a lot of data responses, a lot of transcripts of cross-examination, 100's of pages of PSC orders, probably 100 pages, or more, of court orders. **SEN. BENEDICT** asked **Mr. Nelson** if he was not familiar with most of them. **Mr. Nelson** stated he had read all the court orders and the PSC orders; however, some of the testimony was before his time. He had received testimony that had not become pertinent to cases that had been litigated over the last half a dozen years.

SEN. GARY FORRESTER had three questions to ask **Jack Haffey**. 1) What was the life of the present contract Western Energy had with Colstrip 1 and 2 and when was it signed? **Mr. Haffey** replied he believed the contract was signed in 1971 and was a 35 year contract. 2) What would be the life of the typical coal contract if one was signed today? **Mr. Haffey** said in response, plants like the Colstrip plant were built and committed to in terms of coal supply for the long term. It needed to be a term long enough to know there would be reliable coal supply to let those plants operate and bring electricity to the market for the life of the plant. 3) He then asked what would the price of the coal produced at Colstrip be on the spot market; what would be the price in comparison with the \$12 figure heard this morning? **Mr. Haffey** stated he didn't know the spot market price for coal.

SEN. FORRESTER asked if there were any buyers out there and did Western Energy think it could be sold; was this a viable thing that could happen? **Mr. Haffey** replied he really didn't know. He said he tried to explain to the committee and to everybody at this hearing, that option was something MPC had to consider; although, they hoped it didn't come to that. They had to consider as one of the two options available to them to solve the problems that needed to be solved. The best solution for Montana would be a policy solution through the legislature. They hadn't, as a corporation, studied to see whether there were any potential buyers for Western Energy Coal Company. He said the fact of the matter was if they were unable to solve this challenge through policy decisions by the legislature, the policy choice was quite straightforward, the corporation would be obliged to look at the limited number of options available. He said one of the options would be to offer the assets to somebody who could get the full value out of it, as clearly, this corporation could not. **Mr. Haffey** said they had to look at whatever options they had to solve, once and for all, this problem and seek the best solution.

SEN. FORRESTER asked **Dianna Tickner** if she were to sell Western Energy coal today, signed contracts on the spot market, what would the coal be worth? **Ms. Tickner** stated it would depend upon where the market was, but she would guess somewhere between \$6.50 and \$8.00 and this, again, would depend upon the transportation advantages, etc. She did emphasize the spot market deal would be totally different from the contract deal in the terms and conditions of both sales.

SEN. FORRESTER asked **Ms. Tickner** the same question (second) he asked of **Mr. Haffey**, what the typical length of a contract signed today would be and not the 35 year contract. **Ms. Tickner** reported probably in the five to ten year range.

SEN. KEN MILLER inquired of **Ms. Tickner** if she could give the committee an idea of what the coal then would cost for a typical utility company, after transportation, on their docket. **Ms. Tickner** said generally their customers, for spot sales, or in the upper mid-west, i.e., Minnesota, Michigan, Wisconsin, probably their transportation expense would be somewhere inbetween \$13 and \$15, so it would be \$20 to \$22 for them.

{Tape: 2; Side: A}

SEN. CASEY EMERSON asked **Ms. McCaffree** if they sold this company, what would then happen to the price of electricity or the price of coal, which effected the price of electricity if they should start buying it from the new owner of the mine and what would be likely to happen ten years from now when the contract runs out? **Ms. McCaffree** referred the question to **Bob Anderson**, who stated the fundamental point would be the customers price for electricity should not depend on how the company chose to rate themselves. He said when monopolies were regulated, they were regulated because of an absence of competition, so regulation

kept prices based on the cost of the service, plus a reasonable profit. He declared no matter how the company chose to organize itself, when MPC or a regulated utility came to them to set rates, were their costs reasonable or reflective of the cost of providing the service. He stated it was not reasonable if they sold it to somebody else, then said "sorry but the price doubled". That didn't reflect prudence on the part of their decision making and the ratepayer wouldn't be expected to pay.

SEN. EMERSON said to **Mr. Anderson**, that whoever purchased the company, would try to regulate them. **Mr. Anderson** replied "no", they only regulated the MPC, but they held them responsible for their business decisions as they were affected by them.

SEN. EMERSON asked **Mr. Anderson**, if they said they were not going to sell MPC, what would happen to the price of coal MPC had to pay to buy at some other mine out there in the eastern part of Montana? **Mr. Anderson** replied that was up to the company; they made the decisions and they must be responsible for them.

SEN. EMERSON questioned **Mr. Haffey** on what would happen if they did sell the coal mine. Would the price of coal MPC purchased go up, would it go down, or would it stay the same. **Mr. Haffey** said if the coal company was sold, they would be buying the coal from that other company, and they believed the price to them from the other company should be judged reasonably to fuel their plants to provide electricity to their customers. So, they thought under that situation the coal costs of their coal should be judged reasonably by the PSC. He stated in a very real way, that was a key to what they were talking about here.

Mr. Haffey said if their electric utility had no rules of play in the determination of the price between Western Energy and the owners of the Colstrip plant, they would not be buying from themselves, because they didn't control Western Energy; they were an affiliate and were at arms length. They were not involved in determining the price. They thought the total cost they incurred was reasonable and not to be included in their rates. **Mr. Haffey** stated what they said to the legislature "use the marketplace to determine whether it was fully reasonable". The PSC would be able to do that with the \$7 million rate increase in this bill. He claimed to characterize it in that way was to misunderstand it. He conveyed it was a requirement to the PSC to look to the market to determine how reasonable it was and they thought when the PSC found the price MPC paid, it was the same as what they had paid elsewhere.

SEN. MIKE SPRAGUE questioned **Mr. Anderson** about his statement the MPC was supposed to make management decisions relative to prudence and to the consumers needs. In the case where MPC bought the coal reserves for future use and utilized them to keep a constant supply of products available to guaranty a price stability, was that prudent? **Mr. Anderson** stated it was dependent on the price center. **SEN. SPRAGUE** asked if it was

prudent, or if not prudent, should they be penalized for trying to forecast the needs 30 or 35 years out there? **Mr. Anderson** said it would depend on circumstances when they entered the agreement. They didn't judge them on hindsight. **Mr. Anderson** said it was valid for a PSC to reflect on what the conditions were at the time and whether or not that decision was prudent.

SEN. SPRAGUE asked about the Corette plant, where conditions changed, such as environmental conditions and restrictions were stricter where they had to go out of state to get Wyoming coal in order to meet governmental restrictions; did the PSC take that into consideration? **Mr. Anderson** said that was obviously something imposed on the company as an external force and didn't reflect on any decision the company made. He maintained the PSC would not disallow any expense.

SEN. SPRAGUE asked **Mr. Anderson** to tell him how they fixed the rate for Idaho Power and Light, who was always a competitor, and did **Mr. Anderson** know how the PSC sets the rate, whether it was a market comparison, or whether it was a return on equity? **Mr. Anderson** stated he didn't believe Idaho used coal.

SEN. BENEDICT asked **Mr. Anderson** about fairness. The committee had heard a lot about fairness in this hearing and he was trying to figure out how it was fair from 1959 to 1980, to put the cost of development of the coal facilities into the rate base and consider it a fair market approach to the rate base and then after 1980, after all the development costs had occurred, the risks had occurred, the market prices had been set, the long-term contracts had been set and then all of the sudden the PSC reversed itself and said let us put in the rate base now, now that all the development had occurred. **SEN. BENEDICT** asked how that was fair? **Mr. Anderson** said none of the coal mine assets had ever been in the rate base.

SEN. BENEDICT asked **Mr. Anderson** what was the Dr. Wilson approach? He said in 1980, Dr. Wilson introduced a new approach that essentially treated the coal properties as if they had always been in the rate base. **Mr. Anderson** stated they were providing services to utility customers. He maintained that portion of the mine served utility customers and essentially treated as though it were in the rate base and afforded the rate of return on that portion of the investment.

SEN. BENEDICT asked **John Alke** if Western Energy was sold, what likely change could occur in rates. **Mr. Alke** answered they were actually making this a lot more difficult than it really was. He said it was very simple to answer his question. Assume, as the example **Mr. Alke** gave, the supplier of coal at Big Stone, Knife River, or etc., would assume Western Energy was sold to another company; the minute the event occurred, the price of coal sold by Western Energy under this example, or the price of coal sold by Westmoreland, would be the price reflected in utility rates. He said let's pick a number which said Western Energy now was

selling coal at \$10 a ton to MPC. The PSC's disallowance wiped out \$2 a ton. He stated if tomorrow Western Energy was sold, the full \$10 a ton would, by law, be requested at MPC rates; the legal principle was that they only applied the rate of return methodology to an affiliated company. **Mr. Alke** stated if Western Energy was not affiliated, the full \$10 was the immediate rate. He claimed in the example he gave, everything they paid Westmoreland beginning in June of 1995

Comments: Conversation obliterated by other sounds in room, unable to hear tape.

SEN. SPRAGUE asked **CHAIRMAN HERTEL** about the fiscal note on this bill. **SEN. HERTEL** stated the fiscal report didn't come with **SB 284**. **SEN. BENEDICT** stated a fiscal report generally was on a bill that impacted state government.

SEN. SPRAGUE questioned **Mr. Haffey** on the deliberation of price fairness, it was mentioned \$.75/month would be on the consumer rates. Was there any estimate on the price the business rate would be or what the cause and affect of fairness would be in that case. **Mr. Haffey** explained that with passage of the bill, signed by the Governor, this bill would not change anybody's rates.

Mr. Haffey said **SB 284** would enable MPC, for example, the capability to go to the PSC, make the case of the reasonableness of the coal costs by showing the PSC what the marketplace had offered to someone else. He said when they made that case, the PSC would then be obliged to look at only the market, and that review caused them to conclude their coal market price payment to Western Energy for coal was reasonable and the coal cost would be included in rates. They thought that was what the market would show and was the process they had to go through. Then, their rates would be changed. He declared if the \$7 million example from last year, which, whatever it would be, i.e. \$8 million, \$6 million, or \$9 million in the future, there would then be a rate increase; it would be 2% approximately, applied to communities usage and that would be about \$.75 for months based on 750 kilowatt-hours. He said when applied to a larger customer, like Conoco, 2% was a very large bill. He claimed they used a lot of electricity and wasn't inconsequential to any of their customers.

SEN. MILLER questioned **Duncan Wohlgenant**, Conoco, with the amount of electricity Conoco purchased, had they other options to purchase electricity from any other suppliers. **Mr. Wohlgenant** stated they really hadn't any other options.

SEN. TERRY KLAMPE asked **Mr. Haffey** who MPC paid for the coal mines? **Mr. Haffey** explained, originally in 1959, MPC purchased Northern Pacific Coal from Colstrip. At that time they paid \$1.5 million. **SEN. KLAMPE** asked what that would be in today's dollars. **Mr. Haffey** stated he did not know what that would be in today's dollars; however, the \$1.5 million purchased about 70 or 80 million tons of coal reserve at the site.

SEN. BENEDICT asked **Mr. Haffey** how many tons had MPC purchased subsequent to that; in the neighborhood of \$850 million reserves? **Mr. Haffey** referred the question to **Ms. Tickner**, who stated originally, it was about 900 million tons and of those 900 million tons, the portion that was dedicated to Montana Power Company was roughly around 100 million tons, less than 12% of the total.

Closing by Sponsor:

SEN. VAN VALKENBURG referenced **Mr. Anderson's** testimony before the committee. He told them essentially the parties appearing in this process were not accountable, because they were not subject to cross-examination and not subject to all of the intense scrutiny the PSC subjected those parties to when the PSC completed the job. He declared there was hardly a better example of that than **Mr. Anderson's** answers to the questions of the committee. He said if a member of this committee slipped by one word, incorrectly phrasing a question, **Mr. Anderson** conveniently ducked the question and didn't in any way address the substance of the issue before the committee. He would like to subject **Mr. Anderson** to cross-examination.

SEN. VAN VALKENBURG stated he didn't even practice law in the area of utility rate regulation, but he knew he could establish an awful lot for this committee if he had the opportunity to do that type of cross-examination. He declared first and foremost, remember, the Public Service Commissioners were partisan elected officials. He stated they were trying to carry out the campaign promises they had made when they were elected and they were thinking either about re-election or potential election to other office. He maintained the legislature was a very appropriate check and balance on the process. He related their PSC, from the perspective of a very partisan democrat, had no political balance on it whatsoever and the republicans in this body said, "well maybe there was something just a little bit worth listening to here in this process".

SEN. VAN VALKENBURG contended **Mr. Presley's** testimony was really interesting as the President of a competitor of Western Energy as to how Western Energy was somehow or other, and MPC in the purchase of coal from Western Energy, included phantom costs of transportation in his testimony, and in the price of the coal the MPC was purchasing from Western Energy. He had no idea where **Mr. Presley** came up with this concept of phantom transportation costs. There was absolutely no reference to phantom costs of transportation that **SEN. VAN VALKENBURG** was aware of in the PSC's proceedings. He didn't think the Consumer Council could tell the committee that phantom transportation costs had anything to do with this.

SEN. VAN VALKENBURG declared what **Mr. Presley** wasn't remembering, or thinking about, because he was not subject to PSC scrutiny, was that MPC entered into a 35 year contract in 1971 to supply

coal to the MPC. The cost of that coal changed over the course of a 35 year period, but when that kind of long term stability was provided and supplied to an entity, that must be taken into account, because the price may be at one time or another, \$5 to \$7 a ton, or it may be \$20 a ton. **SEN. VAN VALKENBURG** said if it happened to be \$11 a ton over the course of 35 years, that was what the PSC needed to look at in terms of setting a reasonable and fair price with respect to what went into the rate base for electric utility customers.

SEN. VAN VALKENBURG declared the spot market today may be in the range of \$5 to \$8 a ton for coal, but the spot market was not the appropriate comparison here for the market test under similar contract terms. **Mr. Nelson**, who he thought very appropriately appeared before this committee and made as good an argument as could be made on behalf of consumers and in defense of the PSC's decision the committee should not pass this bill, said the decision to locate the plants at the mine mouth was a decision MPC made totally on its own; that was not so. He professed the decision was made in conjunction with MPC's partners in the construction of Colstrips 1 through 4. He said Puget Sound Power & Light, Portland General Electric, Pacific Power & Light, and Washington Water Power, all had a very strong role in that decision. He stated it wasn't MPC solely that made the decision.

SEN. VAN VALKENBURG reported that Conoco opposed this bill. He really wondered if Conoco were subject to some government entity deciding whether its cost of production of fuel and would feel Conoco was being treated fairly if it was told when it bought crude oil from some subsidiary out there, it was paying too much for that crude oil. He said it was also very interesting Conoco put itself in the same kind of position as the Senior Citizen's and the Low Income Coalition and stated "we happened to be driving down the street and some fairly wealthy guy was moving his money from one place to another in an armored car and the door happened to fly open and the money came rolling out there onto the street in front of us, golly, what could we do but pick up that money and just walk away with it". **SEN. VAN VALKENBURG** declared that was apparently what Conoco thought, they were morally entitled to keep the money. He related fortunately for Conoco, for the Senior Citizens, for everybody else, they kept the money in hindsight, in terms that this rate case had already been decided. **SEN. VAN VALKENBURG** conveyed the question was, should they continue following that armored car down the street and keep expecting the \$300,000 to fall out the back of the truck every year and Conoco able to retain the money.

SEN. VAN VALKENBURG made reference to the fact he thought **Mr. Nelson** very appropriately appeared before this committee and made a very good case, although he didn't feel **Mr. Nelson** was correct. He did think it was questionable here whether the body that made the decision as to whether the rates that MPC charged were appropriate, should come in and oppose a policy question before the Montana Legislature. He said how was it MPC could get a fair

hearing in future rate cases from a PSC that decided it must come in and side against the MPC on this sort of a policy issue. He said could the committee imagine the Montana Supreme Court coming over here and telling the legislature it should not change the law on something that the Montana Legislature had every right to change the law on, but the court had decided a different way earlier. He declared it would not happen. He contended it would not happen in Montana if the Public Service Commission were really being fair to the Montana Power Company. He stated they were not and that was why this bill was here and was why SEN. VAN VALKENBURG was asking this committee to pass SB 284.

EXECUTIVE ACTION ON SB 224

Discussion: Bart Campbell stated the amendments, EXHIBIT #7, were requested by the Sponsor, SEN. CHRISTIANS. They also reflected a couple of changes after the hearing in response to Russell Fields testimony and the Trial Lawyers testimony. Mr. Campbell did not know as far as protocol whether or not the amendments be moved before he spoke further.

Motion: SEN. MIKE SPRAGUE MOVED TO ADOPT AMENDMENTS, SB022401.ABC.

Discussion: Mr. Campbell continued his explanation on the amendments. He stated they were "clean up" and he explained all 8 amendments, (EXHIBIT #7).

Vote: The motion to ADOPT THE AMENDMENTS CARRIED UNANIMOUSLY, EXHIBIT #7.

Discussion: SEN. STEVE BENEDICT related he would like to amend further. This would be a conceptual amendment. Page 1, line 13, strike "five" and insert "seven" and on Page 1, line 17, strike "three" and insert "five". In other words, he would like to make this a seven member board. The committee would add two members from the horseracing industry on the board.

Motion: SEN. STEVE BENEDICT MOVED TO AMEND SB 242, on Page 1, line 13, strike "five" and insert "seven" and on Page 1, line 17, strike "three" and insert "five".

Discussion: SEN. TERRY KLAMPE stated the optimal size of the board should be seven and he agreed with that number.

SEN. MIKE SPRAGUE disagreed as he thought the optimal size should always be the smaller number. He did not have a problem with the number being "six" and "one". He believed it would be a little strong in terms of the horseracing integrity if they had two members.



International Brotherhood of Electrical Workers A.F.L.-C.I.O.

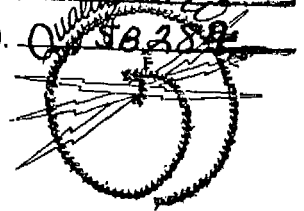
LOCAL UNION 44 • 1901 So. Montana • P.O. Box 3467
Butte, Montana 59702-3467 • Phone 406/723-3203

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 2/7/95 at 2:00

BILL NO. SB 284



Date: February 6, 1995

TO: The Honorable Gary Devlin, Chairman of The Senate Taxation Committee
Capitol Station
Helena, Mt. 59620

FROM: Stan I. Dupree, Business Mgr. & Financial Secretary, Local 44 of the
International Brotherhood of Electrical Workers.

RE: S.B. 284

Dear Mr. Chairman:

I offer this testimony on behalf of the 860 people that are members of Local 44, about 446 which are Montana Power Company Employees. I ask you to support SB. 284. This seems to be a fair proposal considering the facts surrounding this. The Supreme Court upheld the ruling of The Montana Public Service Commission when they did not allow 7 million dollars of coal purchases to be included into the rate base. Although the Supreme Court did agree with Mont. Power Co. that it is not fair but it was legal. I feel that your support of this legislation will accomplish a number things, such as:

It will remove the political pressure from the PSC.

It will allow the PSC to retain a certain amount of control on the price of coal and how much will be allowed into the rate base, if MPC is forced into a sale of the mine the PSC will have lost control over this issue.

It will save MPC from putting the Western Energy Coal Mine on the auctioning block and running the risk of an out of state company getting the bid and possibly laying off Montana workers to bring in their own workforce.

It will allow MPC to claim the coal used to generate electricity into its rate base which is only fair.

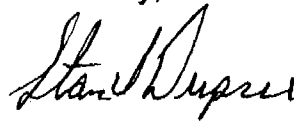
I have been informed that the cost to the average consumer will be approximately .75 cents per month.

The monopolistic rein that major utilities have had in the past is no longer existent. Competition is alive and on the rise, and all utilities coast to coast are downsizing, streamlining and out of necessity, becoming more competitive every day. I am sure that MPC is not trying to do away with the PSC or take away any of the PSCs jurisdiction,

they are trying to prove that coal costs, are in fact an overhead cost that must be recovered, as all costs of doing business are. MPC does have an option, they can sell the coal mine which would make the price of coal being included into the rate base automatic, or at least being perceived as the cost of doing business. The real issue at hand is the mine is owned by Western Energy which is a subsidiary of the MPC and the PSC did not condone the idea of the MPC selling coal to itself. If sale of the mine is the MPCs only way of getting the 7 million dollars into the rate base then you can rest assured the sale will probably happen.

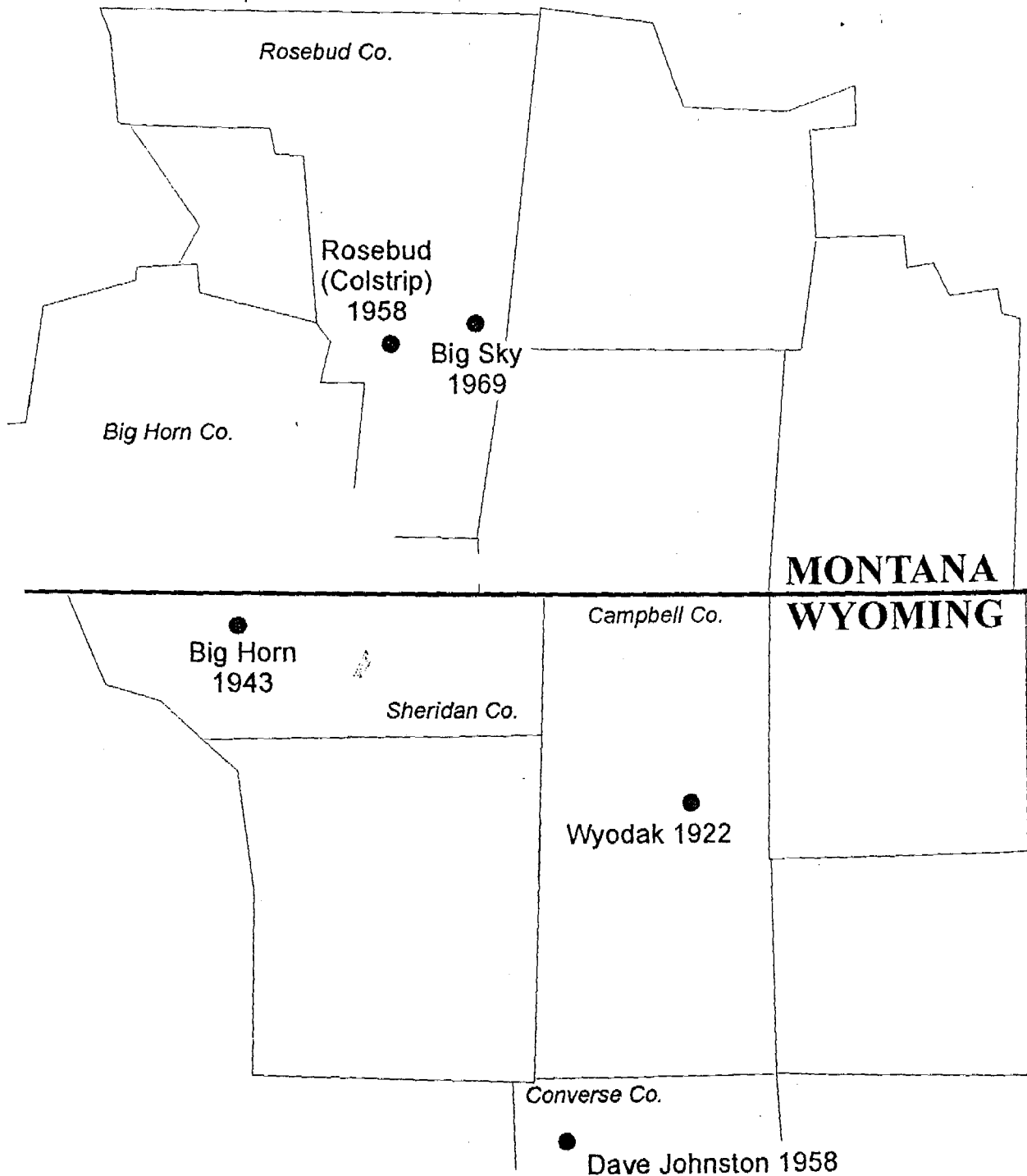
You are probably aware that MPC has historically been one of Montanas largest and most benevolent employers and that they still are. To force the MPC into a sale they would rather not make and a sale that actually would benefit no one would be a travesty of the most naive kind. I urge you to support the intelligent legislation of Senate Bill 284. I am

Sincerely,

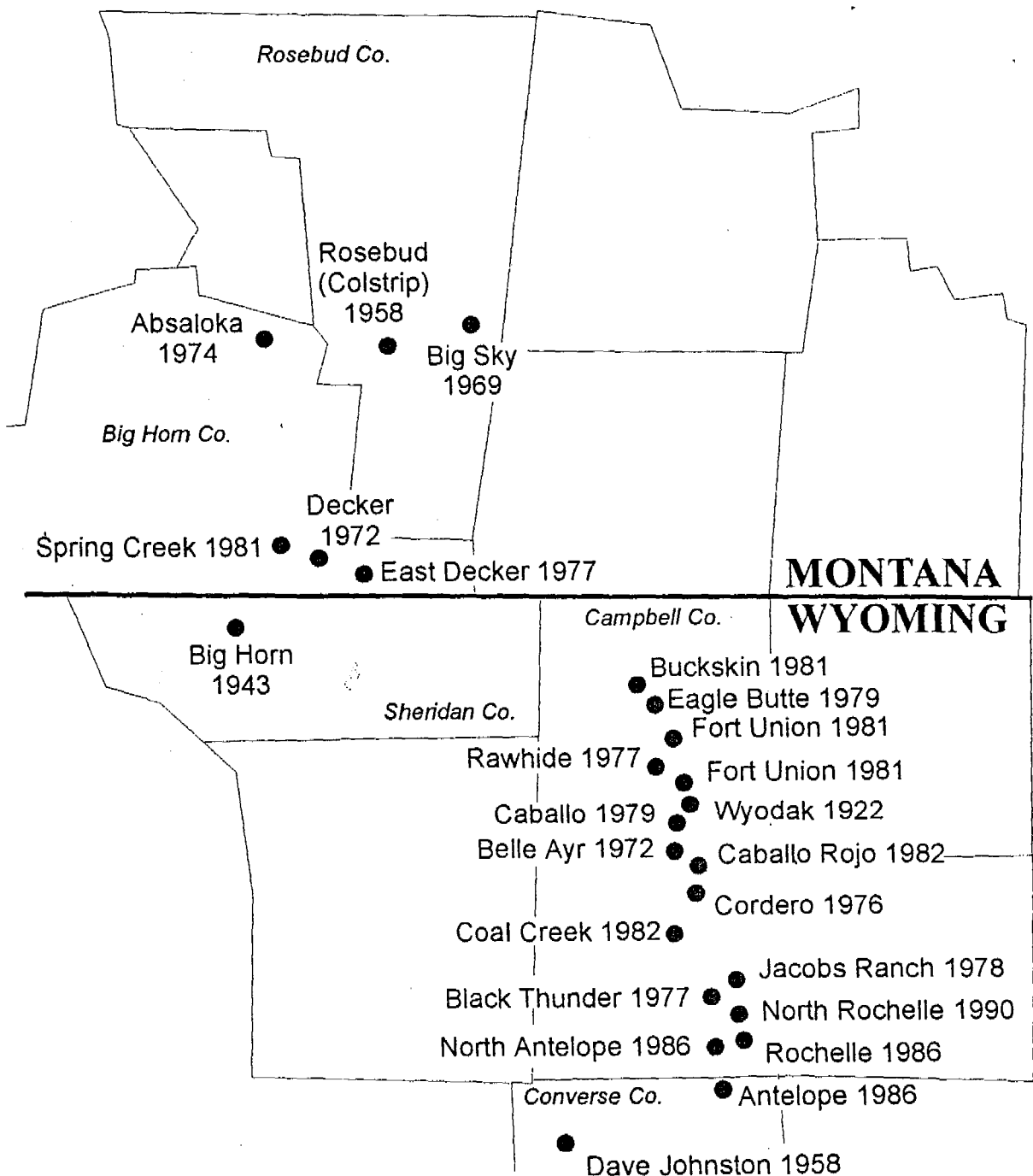
A handwritten signature in cursive script, appearing to read "Stan I. Dupree".

Stan I. Dupree
Bus. Mgr./ Fin. Sec.
Local 44, IBEW.

PRODUCING MINES IN POWDER RIVER BASIN 1970



PRODUCING MINES IN POWDER RIVER BASIN 1993



Note: Years indicate mine start up years.

Sources: BXG, Inc. *Western Coal Series Powder River Basin 1995-2005*, June 1994
1992 *Keystone Industry Manual*

HISTORICAL PRB COAL PRODUCTION

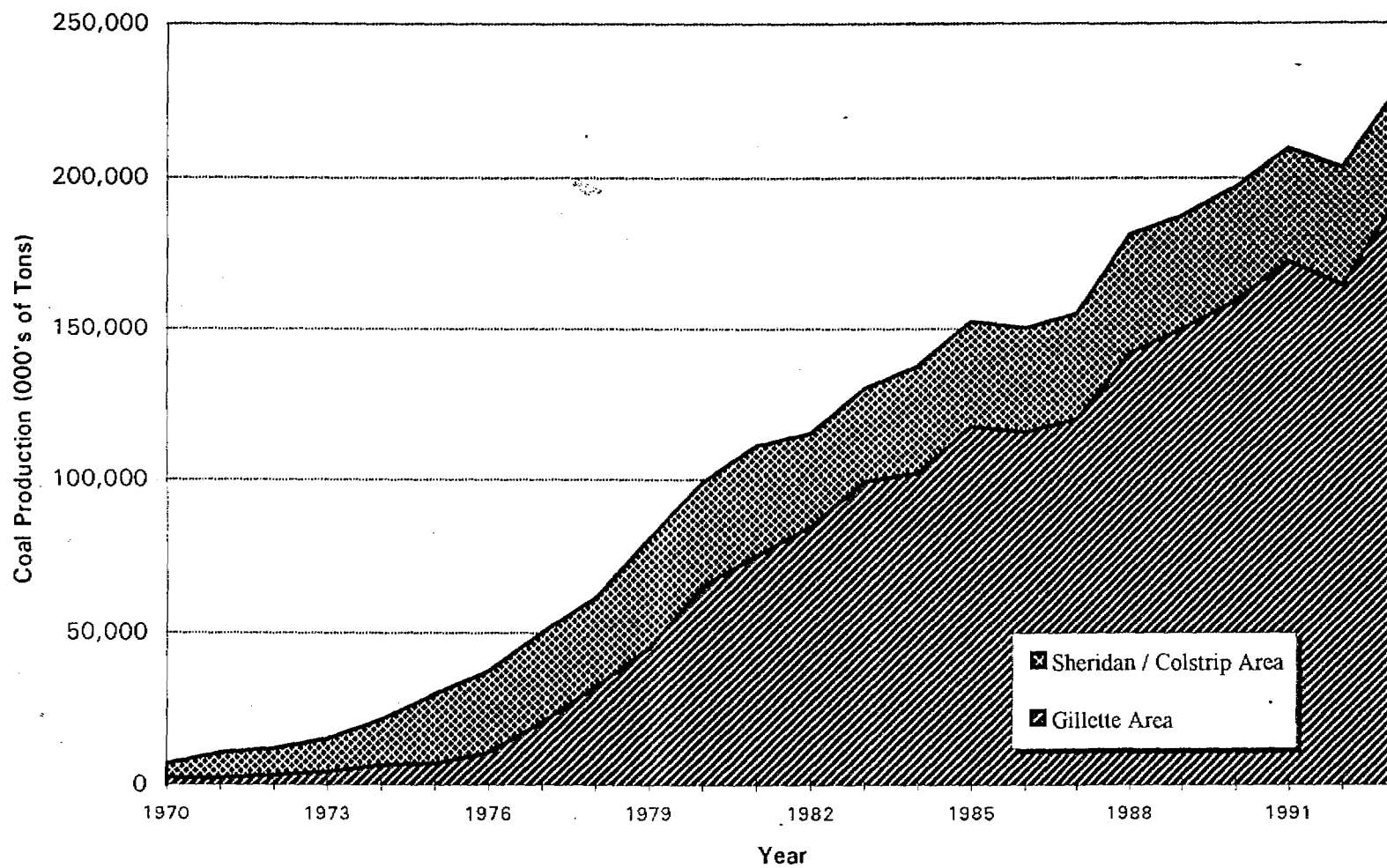


EXHIBIT 2
 DATE 2-7-95
11 SB 284

DEPARTMENT OF REVENUE



TED SCHWINDEN, GOVERNOR

MITCHELL BUILDING

STATE OF MONTANA

HELENA, MONTANA 59620

April 27, 1988

CERTIFIED RETURN RECEIPT REQUESTED

David S. Smith, Treasurer
Western Energy Company
16 East Granite
Butte, MT 59701

RE: Assessment of additional Coal Gross Proceeds for the
1983 thru 1986 production years.

Dear Mr. Smith:

This letter with the attached schedules constitutes notice of the above referenced assessment. This assessment is issued in accordance with Section 15-8-601, Montana Code Annotated. The additional taxable value results primarily from the inclusion of additional revenue as described below.

1) The value of the coal sold to Colstrip 1 & 2 partners (Montana Power Co and Puget Sound Power & Light) was imputed for 1983 since the coal sold in the non arm's-length transactions was priced lower than the market price established by similar agreements with Northern States Power and Wisconsin Power and Light. The values for Montana Power Co and Puget were imputed by using six month weighted averages from NSP and WP&L sales. Values were not imputed for 1984-1986 since the price per ton for sales to related parties were at or above prices charged to unrelated parties.

2) Oiling revenue was included thru the third quarter of 1983. After that it has been excluded. Section 15-35-107(1)(b) M.C.A. which became effective October 1, 1983 allows an adjustment to value for coal that has been processed.

3) Additional sales revenue has been included which was received from customers for work done at the mine and for a coal operations study. These relate to the coal sales and should be included as part of the total coal sales revenue.

4) Information regarding the contract commitment revenue was requested, however, none was provided. Consequently, there is no alternative but to include it in the value of the coal f.o.b. the mine. This does not include deferred revenue for Corette sales. This revenue will be taxed in the appropriate tax period.

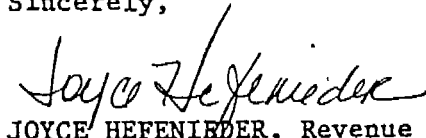
David S. Smith, Treasurer
April 27, 1988
Page 2

Additional adjustments resulted from a total recomputation of contract sales price based on the adjusted coal sales revenue for the tax period. This includes the royalty exemption as a deduction for contract sales price. Any minor differences which occur in the detail are due to rounding.

You are advised that according to Section 15-8-601, a request can be made for an assessment review conference within 30 days of the date of this notice. If a request for conference is not received within 30 days, the assessment becomes final and will be certified to the County Assessor.

Please direct any questions you may have concerning this assessment to one of the undersigned.

Sincerely,



JOYCE HEFENIEDER, Revenue Agent
Natural Resource & Corporation Tax Division

Reviewed and Approved by:

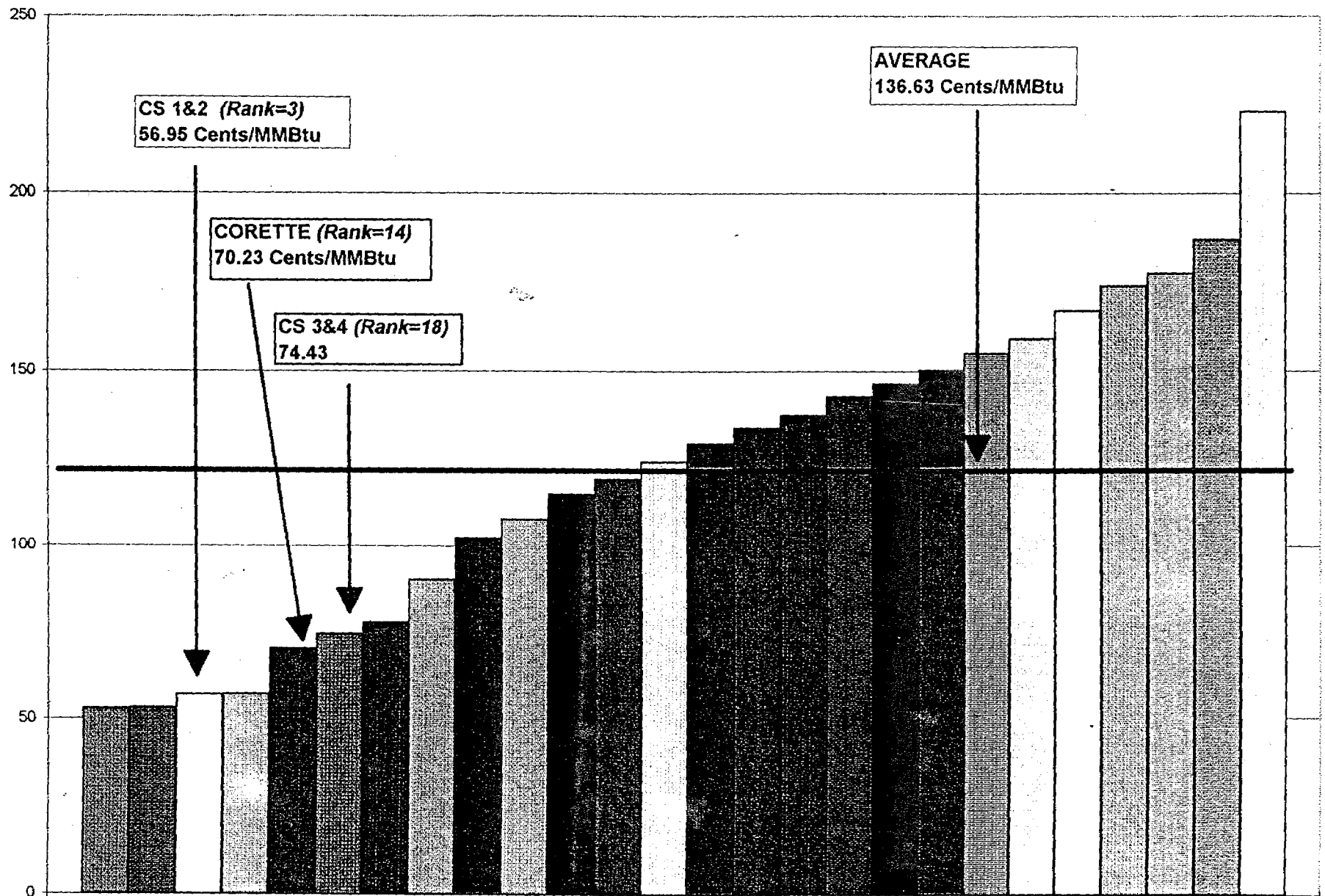


RICHARD J. MARBLE, Chief
Solid Minerals Bureau
Natural Resource and Corporation Tax Division

Attachments

JH/rjm/tm

1994 CENTS/MMBtu FUEL COSTS FOR 428 COAL FIRED PLANTS



1994 CENTS/MMBtu FUEL COSTS FOR 40 MINE MOUTH COAL FIRED PLANTS

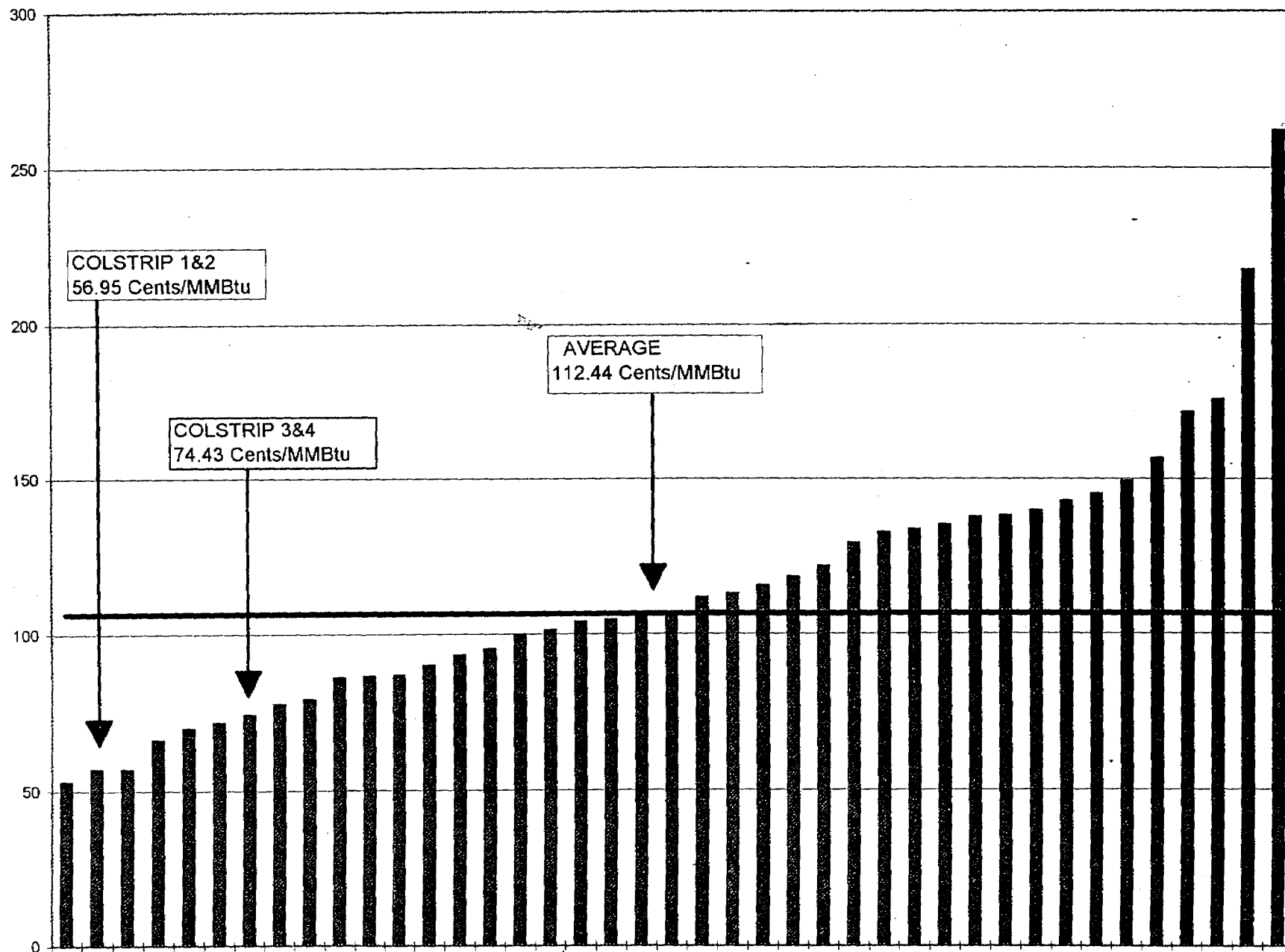


EXHIBIT 2
DATE 2-7-95
5B 284

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Nancy McCaffree, Chair

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Commission Editorial
27 January 1995

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Utility Division, PSC

Questions & Answers

Legal Division, PSC

Montana Public Service Commission
1995

Senate Committee
Business & Industry
Senate Bill 284

Testimony of: Nancy McCaffree, Chair
Public Service Commission

7 February 1995

Senator Van Valkenberg has asked the legislature to require the Public Service Commission to use "contract price" in determining how much electric ratepayers should pay for coal purchased from Montana Power's subsidiary mining company. Senate Bill 284 has been touted as being "fair" to the company. Let's look at what the bill is really about.

Montana Power, behaving as we would expect any monopoly to behave, tries to increase its revenues and profits. One attempt has been to try to get more money for the coal it sells to itself. For years, the PSC, supported by the courts, has said no. Now, MPC sees another opportunity to get its way -- in the legislature, using a "fairness argument".

But MPC doesn't really want a "market " price -- it wants its contract price. The PSC believes a "market" approach can be valid. Under current law we have the authority to consider the market and routinely do so. The trick is determining a true market price in a case in which:

- the coal mine is owned by the utility;

Page 2

Testimony of: N. McCaffree, P.S.C.

- the coal mine was originally acquired to provide service to utility customers;
- the power plant was sited at the company's mine and designed to burn the company's coal;
- the market for coal may not have been competitive when the contract was signed;
- the contract negotiation may not have been "at arms length".

In any rate case, the burden of proof lies with the company. The Commission makes a decision after exhaustive written testimony, discovery, cross examination, written briefs and analysis. The issues are complex and do not lend themselves to resolution in a political atmosphere.

In the last rate case, the PSC listened to MPC's "market" arguments, then watched the company's case wilt under cross examination by the Consumer Counsel. Instead of the \$35 million annual "contract" payment requested by MPC, we allowed \$28 million, which included a fair rate of return on 20% of the coal MPC bought from itself. The other 80% of its coal, which it sells to other buyers, is unaffected by our decision.

What's at stake here? The Company wants the Legislature to increase rates about \$7 million per year. This would not only increase homeowners monthly bills - but would increase small business and industry bills also. The expected increase at the Conoco refinery in Billings would be about \$200,000 if this legislation is enacted. A lot of salaries could be paid with that amount!

MPC has extolled Senate Bill 284 as a jobs bill. The best way for the PSC to strengthen the Montana economy and improve the job situation is to set just and reasonable rates for utility service. Transferring \$7 million per year from MPC's customers to its shareholders is no way to enhance Montana jobs.

A vital principle is also at stake -- the integrity of the rate-making process. The legislature should not increase the revenues and profits of a monopoly utility after it has been unable to carry its burden before the PSC.

That's not good regulation and it's not good government.

PUBLIC SERVICE COMMISSION
STATE OF MONTANA

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3 E
DATE 2/7/95
58284
1701 Prospect Avenue
PO Box 202601
Helena, MT 59620-2601
Telephone: (406) 444-6199
FAX: (406) 444-7618
Compuserve: 70642,1607

Nancy McCaffree, Chair
Dave Fisher, Vice Chair
Bob Anderson, Commissioner
Danny Oberg, Commissioner
Bob Rowe, Commissioner



January 27, 1995

To: The Editor

From: Montana Public Service Commission

Our turn

The Montana Power Company has asked the legislature to require the Public Service Commission to use a "market methodology" in determining how much electric ratepayers should pay for coal bought from the utility's subsidiary mining company. The bill has been touted as being "fair" to the company. Let's look at what the bill is really about.

A little history is important. In the early part of the century markets for monopoly services like electricity were obviously not working and monopoly utilities were reined in by the Montana legislature, along with all other state legislatures and the Congress. The PSC was established to substitute regulation where competition was not effective.

The vital lesson learned by consumers and legislators was, left to their own devices, monopolies abuse their market power and raise prices above what they would be in a competitive market. That's just human nature and it hasn't changed. Regulation of monopoly utilities has been a success, so much so that most people have forgotten what happens in its absence.

An inevitable outcome of regulation is that the monopolies don't get everything they want. Neither do consumers--just read our mail.

Montana Power, behaving as we would expect any monopoly to behave, tries to increase its revenues and profits. One of its attempts has been to try to get more money for the coal it sells to itself. For years, the PSC, supported by the courts, has said no. Now, MPC sees another opportunity to get its way--in the legislature, using a "fairness" argument.

But MPC doesn't really want a "market" price--it wants its contract price. The PSC believes a "market" approach can be valid. Under current law we have the authority to consider the market and routinely do so. The trick is determining a true market price in a case in where:

- the coal mine is owned by the utility;
- the coal mine was originally acquired to provide service to utility customers;
- the power plant was sited at the company's mine and designed to burn the company's coal;

- the market for coal may not have been competitive when the contract was signed;
- the contract negotiation may not have been "at arms' length."

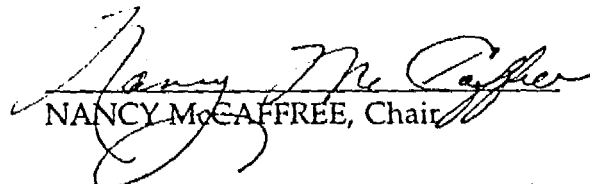
In any rate case, the burden of proof lies with the company. We make decisions after exhaustive evidence, hearings, cross examination, arguments and analysis. The issues are complex and do not lend themselves to resolution in a political atmosphere.

In the last rate case, the PSC listened to MPC's "market" arguments, then watched the company's case wilt under cross examination by the Consumer Counsel. Instead of the \$35 million annual "contract" payment requested by MPC, we allowed \$28 million, which included a fair rate of return on the coal MPC bought from itself. The other 80% of its coal, which it sells to other buyers, is unaffected by our decision.

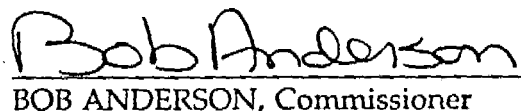
What's at stake here? The Company wants the legislature to increase rates about \$7 million dollars per year--roughly \$50 million over time. By comparison, that's twice the proposed state tax refund.

MPC has also extolled this as a jobs bill. The best way for the PSC to strengthen the Montana economy and improve the job situation is to set just and reasonable rates for utility service. Transferring \$7 million per year from MPC's customers (among them, thousands of small, medium and large employers) to its shareholders is no way to enhance Montana jobs.

A vital principle is at stake--the integrity of the rate-making process. The legislature should not increase the revenues and profits of a monopoly utility after it has been unable to carry its burden before the PSC. That's not good regulation and it's not good government.


NANCY McCAFFREE, Chair


DAVE FISHER, Vice Chair


BOB ANDERSON, Commissioner


DANNY OBERG, Commissioner


BOB ROWE, Commissioner

Estimated Coal Bill Impacts

<u>Industrial Class</u>	<u>Test year</u> <u>Revenues</u>	<u>Projected</u> <u>Annual Increase</u>	<u>Projected</u> <u>Total Increase</u>
Asarco	\$2,856,357.00	\$32,533.91	\$325,339.06
Stimson Lumber	\$2,327,805.00	\$26,513.70	\$265,136.99
Continental Oil (1)	\$15,173,081.00	\$172,821.39	\$1,728,213.93
Exxon	\$8,165,955.00	\$93,010.23	\$930,102.27
Cenex	\$4,687,416.00	\$53,389.67	\$533,896.68
Stone Container	\$17,384,429.00	\$198,008.65	\$1,980,086.46
Holnam	\$1,758,325.00	\$20,027.32	\$200,273.22
Ash Grove Cement	\$1,422,785.00	\$16,205.52	\$162,055.21
Golden Sunlight Mining	\$3,042,107.00	\$34,649.60	\$346,495.99
Montana Refining	\$1,023,958.00	\$11,662.88	\$116,628.82
Montana Tunnels	\$3,046,285.00	\$34,697.19	\$346,971.86
Western Energy	\$2,510,938.00	\$28,599.58	\$285,995.84
Stillwater	\$1,619,252.00	\$18,443.28	\$184,432.80
Montana Resources	\$12,682,319.00	\$144,451.61	\$1,444,516.13
		\$885,014.53	\$8,850,145.27

Other Classes

Residential impacts are estimated to be between \$5.00 and \$10.00 per customer per year or between \$1.2 million and \$2.1 million per year for the residential class as a whole.

Commercial impacts are estimated to be between \$33.00 and \$58.00 per customer per year or between \$1.4 million and \$2.5 million per year for the commercial class as a whole

Assumptions

1993 revenues at current base rates = \$438,709,804 (Docket No. 94.8.30)

\$50 million dollar present value impact assumed to be \$5 million per year (i.e. 10% discount rate)

Annual impact absorbed by all classes on a uniform percentage basis = 1.139%

- (1) Continental Oil test year revenues include \$7,473,081 under contract industrial rates plus 22 pumping stations at about \$350,000 per year per pumping station (conversation w/ Pat Corcoran)

Public Service Commission Testimony -- Senate Bill 284
Questions and Answers

The Public Service Commission (PSC) opposes Senate Bill 284 (Montana Power Company (MPC) requested bill) which would require the PSC to use a so-called "market comparison" approach to decide how much electric utilities may collect from ratepayers for coal and other fuel the utilities buy from their own subsidiaries. The following questions and answers explain what the PSC has done on determining a reasonable coal price and what the legislation means to regulation of public utilities.

What's the issue? The PSC scrutinizes costs for coal that MPC purchases from its affiliate Western Energy Company (WECO) and adjusts those expenses to determine a reasonable amount to recover from the ratepayers. Last year, the PSC accepted (as it has before) a Montana Consumer Counsel proposal to adjust MPC's coal expense, allowing a reasonable rate of return for the WECO coal sales to its parent MPC. (Eighty percent of WECO's coal sales are to customers other than MPC and are unaffected by the adjustment.) Of \$35 million MPC wanted to charge its electric customers for coal expenses, the PSC allowed MPC to recover \$28 million from its ratepayers.

The PSC has made similar adjustments for MDU and other utilities which do business with their own affiliates. Utilities have argued that they should be able to pay their affiliates the "market price" for coal and recover the full amount from ratepayers. The PSC and the courts have rejected the "market price" approach numerous times for lack of evidence of a competitive marketplace. The PSC can, and would, consider a market price comparison with evidence of a competitive marketplace.

Does this legislation propose a market price comparison? No. MPC calls it a "market comparison" in SB 284, but actually proposes a contract comparison. Regardless of what the market is, MPC wants its price on contracts locked in when the market was not competitive.

How much will it cost? If passed, this legislation would affect MPC's ratepayers right away, and according to MPC will cost ratepayers a total of \$50 million over the years. It would also affect MDU ratepayers because MDU purchases coal from an affiliate.

Has the PSC punished MPC because WECO is profitable? No. The PSC's decision only affected the 20 percent of WECO coal which WECO's parent MPC uses to provide electricity for its customers. The PSC does not have any interest in WECO's profits and does not regulate the coal producing company. Because utilities set up separate affiliates to avoid regulatory review, courts have said dealings between utilities and their affiliates

must be closely scrutinized. In the last case, the PSC allowed MPC to recover from ratepayers coal costs plus a reasonable rate of return on its affiliate's investment, for a total of \$28 million. The court reviewing the PSC's decision said that the rates were lawful and reasonable.

Does MPC's market price method involve a "simple comparison" with other coal contracts. No. The MPC contract price method is not "simple." The PSC has considered exhaustive evidence and found that there is no relevant market for comparison. MPC located the generating plants at the mine instead of where the electricity is used, raising electric transmission costs while lowering coal shipping costs. MPC designed the plants to burn its own coal. As a result, it is unlikely that someone else can supply coal on comparable terms. In past cases the evidence did not support the use of a market price method, without actual competition. The PSC has the authority to use a market price method now. However, MPC has not shown that there is a "simple comparison" with other coal contracts.

What method has the PSC used to determine reasonable coal costs in rates? The "rate of return" method. Montana Consumer Counsel first proposed the rate of return method more than 15 years ago. When there is no competitive market for comparison, the PSC determines what rate of return the affiliate coal producer earns on its investment, only for the portion of sales to the utility. The PSC then adjusts the coal purchase expenses to reflect a reasonable rate of return for comparable companies in the industry on the sales to the utility.

Is the rate of return method approved by the PSC complex? Not to an accountant. The "rate of return" adjustment involves an 11-line computation of undisputed numbers. The result changes when those numbers change from year to year. The captive coal disallowance increased to \$7 million in the last case when WECO was reorganized as a pure coal company and paid \$146 million in dividends to its MPC parent, Entech.

Will coal purchase disallowance unfairly increase over time? This is not borne out by experience. The Montana Consumer Counsel's proposed adjustment in the current case is down 19 percent, to \$5.6 million.

If SB 284 does not pass, will MPC be forced to sell WECO to recover the market price for coal from its ratepayers? WECO is very profitable. If MPC sold WECO it would do so for business reasons such as a more profitable use for those assets. Not recovering in rates a proportion of coal purchase costs for 20 percent of the affiliates' sales does not seem to be a sound reason to sell WECO. If WECO were sold, MPC would

presumably argue to the PSC that it should keep all the proceeds and pay the market price for coal. The PSC would have to decide how to treat such a sale based on the evidence.

Would Montana lose jobs if WECO is sold? No. The question is based on an illogical and unsubstantiated concern that if WECO were sold, union jobs would disappear. Colstrip coal is under long-term contract and is the only coal suitable for the Colstrip plants. Employees will still work to produce coal. If the legislation passed, other Montana businesses, employers and employees would be harmed by a legislated rate increase. Fifteen large industrial customers alone would pay a total of \$885,105 per year in increased MPC rates, affecting jobs. The court in Butte found that jobs would not be affected by a sale of WECO.

Has the rate of return method adversely affected MPC? Apparently not. Although MPC filed a new rate case only weeks after the PSC's last order, its bond ratings have been raised both by Fitch and by Duff and Phelps while declining industry-wide. According to Forbes Magazine, MPC's earnings are above the median for western electric utilities, and at the national average (January 2, 1995, p. 157). MPC is a healthy company.

Is single-issue legislated ratemaking appropriate? MPC has not satisfied the PSC, the district courts and the Supreme Court that the market price method is reasonable under the facts it presented. The PSC and the courts have reviewed exhaustive evidence before accepting the Consumer Counsel's proposal. MPC now makes the same "fairness" arguments to the Legislature which were rejected after full hearings before the PSC and courts. The legislature does not have the time or the expertise to examine the complexities. There is inherent danger in legislating ratemaking treatment one issue at a time.

CONCLUSION

The Legislature created the Public Service Commission to make technical decisions. Courts ensure that those decisions are factually and legally correct. The PSC has years of experience listening to testimony and applying its expertise to the evidence. The PSC now has the ability to choose the best method to determine a reasonable coal cost. The Legislature has the authority to require a "market price" coal valuation method. However, it would be a mistake to legislate ratemaking adjustments which go against history and the evidence.

**TESTIMONY OF JOE PRESLEY
PRESIDENT OF WESTMORELAND RESOURCES, INC.
BEFORE THE SENATE BUSINESS AND INDUSTRY COMMITTEE**

**IN OPPOSITION TO SENATE BILL 284
February 7, 1995**

MEMBERS OF THE SENATE BUSINESS AND INDUSTRY COMMITTEE, MY NAME IS JOE PRESLEY AND I AM PRESIDENT OF WESTMORELAND RESOURCES, INC. I AM APPEARING HERE TODAY IN OPPOSITION TO SENATE BILL NO. 284. WESTMORELAND RESOURCES MINES COAL AT ITS ABSALOKA MINE, 25 MILES WEST OF COLSTRIP AND IS AN ELECTRIC CUSTOMER OF MONTANA POWER.

LAST SUNDAY'S *BILLINGS GAZETTE* HAD TWO ARTICLES CONCERNING SENATE BILL NO. 284 WHICH I AM ATTACHING TO MY STATEMENT. ONE IS A GUEST COLUMN BY NANCY MCCAFFREE, CHAIRPERSON FOR THE PUBLIC SERVICE COMMISSION. THE OTHER IS A LETTER I SENT TO THE *BILLINGS GAZETTE* OPPOSING THEIR EDITORIAL SUPPORTING THE "MONTANA BILL". I HOPE YOU TAKE TIME TO READ THESE ARTICLES, PARTICULARLY MRS. MCCAFFREE'S COLUMN.

IN A NUT SHELL, THIS BILL WOULD ALLOW MONTANA POWER TO CHARGE THEIR ELECTRIC CUSTOMERS A TRANSPORTATION COST THAT THEY DO NOT INCUR ON COAL PURCHASED FROM THEIR WHOLLY OWNED SUBSIDIARY, WESTERN ENERGY. THE PSC IS WELL AWARE OF THIS AND SINCE THE BUSINESS ARRANGEMENTS BETWEEN MONTANA POWER AND WESTERN ENERGY ARE NOT ARMS LENGTH, THEY CORRECTLY ALLOWED MONTANA POWER A GUARANTEED 11.5% AFTER TAX RETURN ON

THEIR INVESTMENT IN WESTERN ENERGY. THE LEGISLATURE SHOULD NOT SUBSTITUTE ITS JUDGMENT FOR THE PSC'S.

ON THE OTHER HAND, IF THE LEGISLATURE WANTS TO CHANGE PUBLIC POLICY AND ENACT THIS BILL, THE LANGUAGE IN SUB-SECTION 2 SHOULD BE CHANGED TO READ AS FOLLOWS:

"(2) IN DETERMINING WHETHER THE COSTS INCURRED ARE REASONABLE, THE COMMISSION SHALL COMPARE THE COSTS INCURRED BY THE PUBLIC UTILITY TO THE MINE MOUTH COSTS THAT THE PUBLIC UTILITY WOULD HAVE INCURRED IF THE COAL OR OTHER BOILER FUEL HAD BEEN PURCHASED FROM A DIFFERENT SUPPLIER IN THE NORTHERN POWDER RIVER BASIN [MONTANA] UNDER SIMILAR CONTRACT TERMS."

BY ADDING MINE MOUTH COSTS TO THIS LANGUAGE, YOU PREVENT THE UTILITY FROM CHARGING FOR PHANTOM TRANSPORTATION COSTS. MY GUESS IS THAT MONTANA POWER WOULD NOT LIKE THIS CHANGE AND MIGHT PREFER THE GUARANTEED 11.5% RATE OF RETURN WHICH THE COMMISSION HAS ALREADY GIVEN THEM.

IF THE COMMITTEE HAS QUESTIONS, I WOULD BE GLAD TO ANSWER THEM.

READERS' VOICE

MPC logic convoluted

Billings Gazette

As a long-standing representative of the Montana coal industry and customer of Montana Power, I am compelled to share our company's negative reaction to your recent editorial opinion. In that editorial, The Billings Gazette sides with MPC's convoluted logic that it should be allowed to pass through excessive profits generated by a "sweetheart deal" between it and its subsidiary coal company — to the detriment of MPC's rate payers and benefit of its shareholders.

Your major premise is that MPC should be allowed rates based on the "mine-mouth market cost of coal." I don't think this is what MPC wants because the current mine price for similar Montana Powder River Basin coals is in the \$5 to \$7 per ton range. MPC is paying their subsidiary mine \$11 to \$12 per ton. Pricing at that level would be more comparable to the "mine-mouth, market cost of coal" plus hypothetical transportation costs from a non-subsidiary to the plants. Having wisely located the Colstrip power plants next to their subsidiary's coal reserves, MPC has no real transportation costs and should therefore pay prices more in line with the "mine-mouth market cost of coal" alone. Further, since MPC's plants have no train unloading facilities to handle shipments from non-subsidiary mines, the MPC subsidiary mine is protected from competition.

It is my understanding that the PSC is allowing the subsidiary mine to pass along all of their costs in producing coal plus a guaranteed 11.5 percent after tax return on their invested capital. Most mines in Montana, including our Absaloka mine, would love to have a guaranteed 11.5 percent after tax return on investment. I expect that most businesses in Montana would love to have a similar guaranteed return.

In summary, it is not the current "mine-mouth market cost of coal" that the subsidiary wants to charge MPC. Instead, I believe that what they want to charge is based on the "mine-mouth market cost of coal" plus transportation costs (which there are none) or perhaps the market price determined by MPC and the subsidiary many years ago. The cost of electricity for our Absaloka mine in 1994 was slightly less than one million dollars. We compete in the out of state market with MPC's subsidiary at current market prices (including mine costs plus transportation). MPC should be treated fairly, but on the other hand customers of MPC should also be treated fairly. The PSC and the court were fair!

Joe Presley, President
Westmoreland Resources, Inc.
Billings

EXHIBIT

4

DATE

2-7-95

SB 284

VITAL PRINCIPLE AT STAKE

Billings Gazette

2/5/95

Is MPC request out of line?

Unfettered monopolies abuse their market power

GUEST COLUMNIST



Nancy McCaffree
PSC Chairman

THE MONTANA POWER Co. has asked the Legislature to require the Public Service Commission to use a "market methodology" in determining how much electric ratepayers should pay for coal bought from the utility's subsidiary mining company. The bill has been touted as being "fair" to the company. Let's look at what the bill is really about.

A little history is important. In the early part of the century, markets for monopoly services like electricity were obviously not working and monopoly utilities were reined in by the Montana Legislature, along with all other state legislatures and the Congress. The PSC was established to substitute regulation where competition was not effective.

The vital lesson learned by consumers and legislators was, left to their own devices, monopolies abuse their market power and raise prices above what they would be in a competitive market. That's just human nature and it hasn't changed. Regulation of monopoly utilities has been a success, so much so that people have forgotten what happens in its absence.

An inevitable outcome of regulation is that the monopolies don't get everything they want. Neither do consumers — just read our mail.

Montana Power, behaving as we would expect any monopoly to behave, tries to increase its revenues and profits.

One of its attempts has been to try to get more money for the coal it sells to itself. For years, the PSC, supported by the courts, has said no. Now, MPC sees another opportunity to get its way — in the Legislature, using a "fairness" argument.

But MPC doesn't really want a "market" price — it wants its contract price. The PSC believes a "market" approach can be valid. Under current law, we have the authority to consider the market and routinely do so. The trick is determining a true market price in a case in which:

- The coal mine is owned by the utility.
- The coal mine was originally acquired to provide service to utility customers.
- The power plant was sited at the company's mine and designed to burn the company's coal.
- The market for coal may not have been competitive when the contract was signed.
- The contract negotiation may not have been "at arms' length."

In any rate case, the burden of proof lies with the company. We make decisions after exhaustive evidence, hearings, cross examination, arguments and analysis.

The issues are complex and do not lend themselves to resolution in a political atmosphere.

In the last rate case, the PSC listened to MPC's "market" arguments, then watched the company's case wilt under cross examination by the Consumer Counsel. Instead of the \$35 million annual "contract" payment requested by MPC, we allowed \$28 million, which included a fair rate of return on the coal MPC bought from itself. The other 80 percent of its coal, which it sells to other buyers, is unaffected by our decision.

What's at stake here? The company wants the Legislature to increase rates about \$7 million a year — roughly \$50 million over time. By comparison, that's twice the proposed state tax refund.

MPC has also extolled this as a jobs bill. The best way for the PSC to strengthen the Montana economy and improve the job situation is to set just and reasonable rates for utility service. Transferring \$7 million per year from MPC's customers (among them, thousands of small, medium and large employers) to its shareholders is no way to enhance Montana jobs.

A vital principle is at stake — the integrity of the rate-making process. The Legislature should not increase the revenues and profits of a monopoly utility after it has been unable to carry its burden before the PSC. That's not good regulation and it's not good government.

Nancy McCaffree chairs the Montana Public Service Commission. The other members are Dave Fisher, vice chair; Bob Anderson, commissioner; Danny Oberg, commissioner; and Bob Rowe, commissioner.

Cazette 2/10/95

■ MPC COAL

PSC ruling should stand

Courts won't overturn
PSC and Legislature
shouldn't either

THE MONTANA POWER Co., in 1994, asked the Public Service Commission for permission to place \$35 million that it spends to purchase coal from its subsidiary the Western Energy Company into its rates. The PSC heard the case and, joined by the Montana Consumer Counsel, granted MPC \$28 million, but disallowed \$7 million.

The MPC argues that it has been unfairly treated and that the PSC should use "market price" rather than the "rate of return" methodology that is used. Before arriving at a judgment, we need to consider the reasoning of the PSC and the Montana Consumer Counsel.

The MPC insists that their purchase of coal from its subsidiary Western Energy Company is an arm's length transaction. Judge Sullivan of Butte, to whose court the PSC decision was appealed, has said, however, "The court finds that the PSC must apply intense scrutiny to utility-subsidary transactions, regardless of the claim that the subsidiary supplies the utility as a result of an arm's length transaction negotiated by a generating partner." There are other factors which suggest that these transactions are less than arm's length.

In 1959 the MPC purchased the old Northern Pacific Company's coal beds at Colstrip. At that point, according to testimony, it intended only to supply coal to its own generating facilities, but in 1966 it set up Western Energy Company and transferred its extensive coal reserves to its subsidiary. It was clear when they did

GUEST COLUMNIST



**Chet
Blaylock**

Former
state senator

this that they intended to begin selling coal to others. In the 1980s, MPC went into the present holding company configuration.

When the MPC built the Corette plant in Billings and Colstrip units 1 and 2, it designed the boilers so they could burn only coal from the Rosebud seam which they own. They may have had more than one reason for doing this. One reason would be they wanted boilers that would handle the quantity of slagging they knew they would encounter. As a corollary, however, this would prevent the PSC from ordering them to buy cheaper coal from a competitor which could reduce rates to Montana Power consumers. It is such factors that persuades the PSC to use the "rate of return" method rather than the "market price" principle.

The MPC asserts that it can't earn an adequate return under the rulings of the PSC if it can't charge off the full price of Western Energy coal. It threatens to sell Western Energy unless the Legislature overrules the PSC and allows the MPC to put the entire \$35 million into its rates. This threat flies in the face of the following:

First, Western Energy earnings have increased \$6.5 million over a previous case. In addition, the PSC allowed MPC expenses for coal that were based on an

11.5 percent return on Western's capital. This was compared to 15 other coal energy companies cited in testimony that are earning an average between 9 and 12 percent on their equity capital.

Beyond this, the present \$7 million that has been disallowed is only on the 20 percent of Western Energy's coal that is sold to MPC. The remaining 80 percent of its coal production goes to other customers and, by its own admission in its brief, Western Energy earns 87 percent profit on its investment. MPC disputes the 87 percent profit figure, but it lost that argument before the PSC and in the court.

Lastly, when the MPC decided to build their units 1 and 2 at Colstrip they then had to build 100 miles of transmission lines from Colstrip to their load center at Billings. This cost was borne by the consumers of MPC because it was placed in the rate base. This is further reason for the PSC to use the "rate of return" methodology.

This Legislature is free, of course, to overturn the decision of the PSC but should it? The issue of "rate of return" vs "market price" has been before the Montana Supreme court three times and, while the court said in the first instance that it preferred the "market price" approach, in two later cases it implicitly backed away from this position. Even in the first case, however, it declared that it would not substitute its judgment for that of the PSC and its expertise. The courts have refused to overturn PSC decisions in the past unless they found them to be arbitrary or capricious. The Legislature should not rush in where the courts have refused to go.

Recently retired State Senator Chet Blaylock is an eight-year member of the Consumer Counsel Oversight Committee.

MontPIRG

Montana Public Interest Research Group

360 Corbin Hall - Missoula, MT - (406) 243-2908

Testimony Against Senate Bill 284, February 7, 1995

Chairman Hertel and members of the Senate Business and Industry Committee:

For the record, my name is J.V. Bennett, for the Montana Public Interest Research Group, or MontPIRG.

MontPIRG is a non-profit, non-partisan research and advocacy organization working for good government, consumer rights and sound environmental protection. MontPIRG represents over 4000 members in Montana, with 2200 student members students, and is funded with membership donations.

As an organization advocating consumer interests and good government, MontPIRG rises in opposition to Senate Bill 284, which would limit the public Service Commission's ability to fairly regulate monopoly utilities.

Despite the abuses by monopolies in the early part of this century, we as a society have continued to allow some monopolies, like the Montana Power Company, as public utilities in order to efficiently provide vital services. At the same time we have recognized some sort of public oversight is required in the absence of competition on an open market. For this reason Montana instituted the Public Service Commission.

The Public Service Commission was instituted to have the expertise to gather and evaluate the information necessary to determine fair utility rates. The process is designed to insure the utility a fair profit and consumers a fair rate, in this case for electricity.

The Montana Power Company is asking the Legislature to skew the process by limiting the factors the Public Service Commission may consider in determining rates. By not allowing the Public Service Commission to consider the unique conditions of the Montana Power Company's relationship with its coal supplier, the Legislature would significantly increase the electricity rates to Montana consumers and business.

Because the Montana Power Company buys its coal from a wholly owned subsidiary under unique conditions which could not be met by another coal supplier, this bill's requirement for "market comparison" would not provide an accurate basis for determining rates. The result would be an unfair increase in electrical rates to customers who lack the option of switching to another supplier.

According to Montana Power it could pass on an additional \$50 million to rate payers if this market comparison methodology were used. This is \$50 million that will come out of the pockets of Montana families and business.

MontPIRG urges this committee to table Senate Bill 284. It's bad for consumers, bad for business and bad as a governmental policy. Bad for just about everybody, except Montana Power.

DATE

2/7/95

SENATE COMMITTEE ON

Business & Industry

BILLS BEING HEARD TODAY:

284

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
FRANK CROWLEY	ASARCO	284		✓
Jim Jensen	MEIC	284		X
Henry McCaffrey	PSC	284		✓
J. V. Bennett	Mont PIRG	284		✓
Wendell	PSC	284		✓
Jeff Barber	NPRC	284		X
Bob Anderson	PSC	284		
Richard Deaton	PSC Miner	284	X	
Patricia Gaudreel	miners	284	X	
Larry D. Gendall	Miners	284	✓	
Russ Ritter	MT Resources	284		
Deborah Smith	Sierra Club	284		✓
Tom Schneider	NPRE / Self	284		X
Chet Kury	MLIC	284		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on February 8, 1995, at 8:00 a.m.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Ken Miller (R)
Sen. Mike Sprague (R)
Sen. Gary Forrester (D)
Sen. Terry Klampe (D)
Sen. Bill Wilson (D)

Members Excused: N/A

Members Absent: N/A

Staff Present: Bart Campbell, Legislative Council
Carla Turk, Recording Secretary, in absence of
Lynette Lavin, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 239, HB 138
Executive Action: SB 177 DO PASS AS AMENDED
SB 216 DO PASS AS AMENDED
SB 228 DO PASS AS AMENDED
SB 284 DO PASS
HB 163 BE CONCURRED IN AS AMENDED
HB 138 BE CONCURRED IN
SB 239 TABLED

HEARING ON HB 138

Opening Statement by Sponsor:

REP. MARIAN HANSON, HD 1, Billings, stated all this bill did was change the due date for annual reports for utilities from three months to four months. She said the June 30th closing would be

partner. He said this made them responsible for notification. He believed it was way overdue.

SEN. BENEDICT stated there were other remedies for this in law, and he didn't believe they needed to go so far as putting together a bill for one person, who had already been provided with remedies.

SEN. WILSON stated he didn't feel this was just for one person. Everyone could benefit. He related partnerships were contentious and often they broke up. He expressed people take shots at the partner they were having trouble with. SEN. WILSON contended this bill was good for business.

SEN. KLAMPE stated he agreed with SEN. BENEDICT.

SEN. MILLER stated that a minority party could still get in trouble and it didn't help three-way partnerships. SEN. SPRAGUE disagreed because he had been involved in many partnerships, including multiple ones, and those where he was the minority partner. Minority partners could cancel insurance, and banks were not obligated to notify if a partner withdrew all the funds.

SEN. EMERSON stated this was a good bill and would help quite a few people.

SEN. MILLER stated he would vote for the bill but he doubted it did any good.

Vote: The motion DO PASS SB 228 AS AMENDED CARRIED 8-1 on voice vote with SEN. BENEDICT voting "NO".

EXECUTIVE ACTION ON SB 284

Motion/Vote: SEN. FORRESTER MOVED SB 284 DO PASS. The motion CARRIED UNANIMOUSLY on oral vote.

EXECUTIVE ACTION ON HB 163

Motion: SEN. BENEDICT MOVED TO ADOPT AMENDMENTS, EXHIBIT #17.

Discussion: Bart Campbell stated the amendments were brought to him by the Department of Administration in response to the concern that the contract performance bond be discretionary, the contract performance security.

SEN. BENEDICT asked if this gave the Department the authority to waive the performance bonding for people like temporary service contractors. Mr. Campbell stated he believed it was an attempt to make it purely discretionary so they were not required to ask

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN RICHARD SIMPKINS**, on March 1, 1995,
at 9:00 A.M.

ROLL CALL

Members Present:

Rep. Richard D. Simpkins, Chairman (R)
Rep. Matt Denny, Vice Chairman (Majority) (R)
Rep. Dore Schwinden, Vice Chairman (Minority) (D)
Rep. Matt Brainard (R)
Rep. Patrick G. Galvin (D)
Rep. Dick Green (R)
Rep. Antoinette R. Hagener (D)
Rep. Harriet Hayne (R)
Rep. Sam Kitzenberg (R)
Rep. Bonnie Martinez (R)
Rep. Gay Ann Masolo (R)
Rep. William Rehbein, Jr. (R)
Rep. George Heavy Runner (D)
Rep. Susan L. Smith (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Lila V. Taylor (R)
Rep. Joe Tropila (D)

Members Excused: NONE

Members Absent: NONE

Staff Present: Sheri Heffelfinger, Legislative Council
Christen Vincent, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 284, SB 105
Executive Action: None

{Tape: 1; Side: A.}

REP. CAROLYN SQUIRES asked if they would be handicapping and slowing down the process and could they get in trouble for not complying with the rules if these four people were to object.

SEN. JENKINS stated the Code Committee would have to meet in six months. They would be able to determine if this process was abused or correctly followed. The committee would not only be able to object to a rule as a whole but also to a portion of a rule.

REP. SQUIRES asked if he felt this could tentatively stop the whole process.

SEN. JENKINS stated if they do the job they are supposed to they would only be looking at the legislative intent of the rules.

{Tape: 1; Side: B.}

Closing by Sponsor:

SEN. JENKINS stated they needed to stop thinking that the legislature and administration were separate. The committee would be able to hold those rules that were not the intent of the legislature until the next legislature could look at them. This "puts the teeth back in the Code Committee." There is a safeguard to this bill that half of the committee must object to the rule before they could delay. He stated this bill was necessary to pass.

HEARING ON SB 284

Opening Statement by Sponsor:

SEN. FRED VAN VALKENBURG, SD 32, stated this bill was considered to be complex but it is actually simple and straight forward. It comes down to whether or not they should use market competition as the cost of coal or apply complex returns. This affects what the charge for utilities is. This had been studied at length. They don't want the market to be a monopoly, they want to set price. There is no retroactive cost for this. He referred to testimony submitted by Joe Presley, EXHIBIT 2

Proponents' Testimony:

REP. BILL RYAN, HD 44 submitted letters written to him. EXHIBIT 3 He stated when something is not allowed in the rate case they turn around and knock it. He urged a do pass recommendation from the committee.

CHAIR TURNED OVER TO VICE CHAIRMAN MATT DENNY.

Jack Haffey, Montana Power Company, submitted written testimony. EXHIBIT 4

Diana Tikner, Western Energy Co., submitted written testimony.
EXHIBIT 5

{Tape: 2; Side: A.}

John Alkey, stated they are not taking about a monopoly in this bill. If they file a case next year the price will reflect the increasing price. He urged a do pass.

John Vacio, submitted written testimony. EXHIBIT 6

Pat Campbell worried about his job. He stated the more potential a company has to grow the better. He urged the committee to support the bill.

Kelly Wiedrich, IVOE Local 400, stated he was concerned about the jobs. He submitted written testimony. EXHIBIT 7

Jim Shaffer, Colstrip Miner, submitted written testimony.
EXHIBIT 8

Opponents' Testimony:

Nancy McCaffree, PSC, submitted written testimony. EXHIBIT 9

Bob Nelson, Consumer Council, stated this was created to represent the consumers. The PSC return was not spur of the moment. It was applied to the facts. He read the court decision.

{Tape: 2; Side: B.}

The committee did not recognize the need. Montana Power has done a good job at lowering costs. He didn't think they should allow them to raise rates. This is subject to reversal. They have appealed the decision but it hasn't been overturned. Simple assertion is easy to make things more difficult to prove. He urged the committee to do not pass this bill.

Nick Golder, NPRC, submitted written testimony. EXHIBIT 10

Tom Schneider, Northern Plains Resource Council, stated this is dangerous to blindly accept contract prices. The partners and financial community are in disagreement over this. They are saying the same thing has been alluded to for a long time. It represents opening a can of worms for the legislature to set strict regulatory limits.

Debbie Smith, Sierra Club, stated in the sponsor's opening statements he had said legitimate costs for Montana Power had been denied. She asked if they are legitimate. By saying market pricing is simple is not the case. She asked if the companies are going to treat their employees well. She stated this undermines their analysis.

Jim Jensen, MEIC, stated this bill is the most severe threat they have had in regulating utilities in Montana. He stated this couldn't be reviewed in the legislative session. He urged the committee to reject the bill.

J.V. Bennett, MontPIRG, submitted written testimony. EXHIBIT 11

Informational Testimony: None

Questions From Committee Members and Responses:

REP. SAM KITZENBERG asked what the difference was between Montana and Wyoming.

SEN. VAN VALKENBURG stated the difference was in coal. This has a greater BTU value. There is also a difference in the state's taxation of the coal. Montana Legislation reduced this to a 15% rate. He stated there is no simple single answer to the question.

REP. KITZENBERG stated jobs are a big issue. He asked what plans the opponents have to replace the jobs.

Mr. Golder stated whoever buys will get rid of the top heavy management.

Mr. Vacio stated a lot of people have benefited from this as well and they have a good relationship.

{Tape: 3; Side: A.}

REP. BILL REHBEIN asked if Montana Power will solve these problems whether or not this bill is passed.

Mr. Haffey stated Montana Power will solve these whether the Legislature adopts this bill or not. The mine won't necessarily be sold. Cost incurred will have a slight rate increase. He didn't think it is possible they could have gotten coal cheaper.

REP. REHBEIN asked where they got their information.

Mr. Golder stated they were deeply involved in what had gone on in their management. They see their management practiced that would have put him out of business if he would have used them. He would hate to be silent and let these things go on.

REP. REHBEIN stated he would like to see actual figures.

Mr. Golder stated he didn't have actual figures.

REP. SQUIRES asked someone to reply on the ratio of employees.

Ms. Tickner stated the ratio is four-to-one and that is with salary hourly payments.

REP. SQUIRES asked if there are any guarantees.

Mr. Haffey stated this is not something that has been studied thoroughly and it isn't a threat. It would be fairness to policy to adopt this bill. One option is to sell the assets. This will solve it one way or another. There is no threat that would happen.

REP. SMITH asked if Montana Power were to sell Western Energy if a new company would replace it or would ROE be used.

SEN. VAN VALKENBURG stated as long as the agreement met with present cost methods this would be allowed.

REP. JAY STOVALL asked if this bill were to pass would they have the right to set rules.

Dan Obrick, SD 1, stated this would give explicit direction but it is hard to speculate.

REP. STOVALL asked if it should be left up to the PSC.

Mr. Obrick stated they would have to look and compare.

REP. STOVALL asked if this was a fair way of doing this.

Mr. Obrick stated there are other factors that need to be taken into consideration.

REP. STOVALL asked if this was simpler than the Rate of Return.

Mr. Obrick stated there are other outlines and other things that are taken into consideration.

REP. DICK GREEN asked for a comment about there being no other marketplace.

Mr. Haffey stated this would turn the direction to some other mine. There are many options and he believed the case is robust for the coal market.

REP. BRAINARD asked if 80% of this would go to Montana Power.

Ms. Tickner stated only 75% would go to them.

REP. BRAINARD asked how many this would be.

Ms. Tickner stated it would be 13.

REP. Brainard asked if these were all long term agreements.

Ms. Tickner stated there are some long term, and some short term. There is a variety.

REP. BRAINARD asked if there were any long term that went to Montana Power.

Ms. Tickner stated there were.

REP. BRAINARD asked how much it would be per ton.

Ms. Tickner stated it would be consistent with the others.

REP. BRAINARD asked if Western Energy were sold would it be an option to sell to Montana Power.

REP. TAYLOR asked if Western Energy sold would the price be different.

Ms. McCaffree stated there would be options, but she couldn't say for sure.

REP. HEAVY RUNNER asked if this issue was rarely brought before a court and is it unfair?

Mr. Haffey stated that wasn't what he was saying. The courts say Montana law allows it.

REP. HEAVY RUNNER asked since they had failed with this going through the courts if they would turn to outside help.

Mr. Haffey stated the courts simply interpret the law and that is why they had turned to the legislature.

REP. BONNIE MARTINEZ asked if there were other ways and methods to do this.

Ms. McCaffree stated there are other ways to do this.

{Tape: 3; Side: B.}

CHAIRMAN SIMPKINS asked how many shares they had with Western Energy.

Mr. Haffey stated if they own Montana Power, they own Western Energy.

CHAIRMAN SIMPKINS asked if there was an ample supply.

Mr. Haffey stated they have some surplus and have capacity means.

CHAIRMAN SIMPKINS asked if there were 100 megawatts of power that they were unable to use.

Mr. Haffey stated the power from unit 4 is not part of the rate base and is separately managed. They have 30% ownership with that.

CHAIRMAN SIMPKINS asked if they could see them having to sell out of state.

Mr. Nelson stated the primary long term safe service will sell out of state and is committed through long term contracts to supply Montana Power and other utilities was well.

REP. DENNY asked if Montana Power transported costs if they believed the PSC would discount the transfer cost.

SEN. VAN VALKENBURG stated that was right.

REP. TAYLOR asked who the interveners were.

SEN. ECK stated they can vary all over.

REP. TAYLOR asked if they all have input.

SEN. ECK stated they do if it deals with the issue.

REP. DORE SCHWINDEN asked what the general assessment of other states was.

Mr. Schneider stated it varies across the United States and it is not unique.

Closing by Sponsor:

SEN. VAN VALKENBURG closed and thanked the committee for their time.



WESTMORELAND RESOURCES, INC.

P.O. Box 7087, Billings, Montana 59103 [406] 248-7803

February 27, 1995

FEDERAL EXPRESS

Honorable Dick Simpkins
Montana House of Representatives
State Capitol
Capitol Station
Helena, Montana 59620

Dear Representative Simpkins:

Re: Senate Bill No. 284--Montana Power Bill

Because of a previous commitment, I will not be able to attend the House State Administration Committee Hearing on Senate Bill No. 284. I am enclosing written testimony that I would have given had I been able to attend this hearing. I hope you will consider this testimony in your deliberations on Senate Bill No. 284.

Besides my testimony, I am enclosing a copy of Judge Sullivan's decision dated December 29, 1994, upholding the Public Service Commission decision to disallow approximately \$7 million of Montana Power Company's \$35 million annual coal costs from its mining subsidiary Western Energy Company (WECO). I particularly call your attention to Findings of Fact Nos. 13 and 14.

Sincerely,

Joe Presley
President

Enclosures

EXHIBIT two
DATE March 1, 1995
HB SB 284



International Brotherhood of Electrical Workers A.F.L.-C.I.O.



LOCAL UNION 44 • 19C
Butte, Montana 59702

Post-it Fax Note 7671		Date <u>3-1-95</u>	# of pages <u>2</u>
To <u>Bill Ryan H.D.</u>	From <u>Alia</u>		
Co./Dept <u>State Capitol</u>	Co. <u>2744 OKS</u>		
Phone #	Phone # <u>406-723-3203</u>		
Fax # <u>406-444-1634</u>	Fax # <u>406-723-3220</u>		

Date: February 6, 1995

House Business & Industry
TO: The Honorable Gary Devlin, Chairman of The Senate Taxation Committee
Capitol Station
Helena, Mt. 59620

FROM: Stan I. Dupree, Business Mgr. & Financial Secretary, Local 44 of the
International Brotherhood of Electrical Workers.

RE: S.B. 284

Dear Mr. Chairman:

I offer this testimony on behalf of the 860 people that are members of Local 44, about 446 which are Montana Power Company Employees. I ask you to support SB. 284. This seems to be a fair proposal considering the facts surrounding this. The Supreme Court upheld the ruling of The Montana Public Service Commission when they did not allow 7 million dollars of coal purchases to be included into the rate base. Although the Supreme Court did agree with Mont. Power Co. that it is not fair but it was legal. I feel that your support of this legislation will accomplish a number things, such as:

It will remove the political pressure from the PSC.

It will allow the PSC to retain a certain amount of control on the price of coal and how much will be allowed into the rate base, if MPC is forced into a sale of the mine the PSC will have lost control over this issue.

It will save MPC from putting the Western Energy Coal Mine on the auctioning block and running the risk of an out of state company getting the bid and possibly laying off Montana workers to bring in their own workforce.

It will allow MPC to claim the coal used to generate electricity into its rate base which is only fair.

I have been informed that the cost to the average consumer will be approximately .75 cents per month.

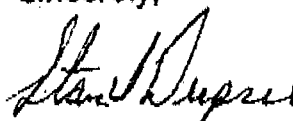
The monopolistic rein that major utilities have had in the past is no longer existent. Competition is alive and on the rise, and all utilities coast to coast are downsizing, streamlining and out of necessity, becoming more competitive every day. I am sure that MPC is not trying to do away with the PSC or take away any of the PSCs jurisdiction,

EXHIBIT Three
DATE March 1, 1995
HB SB 284

they are trying to prove that coal costs, are in fact an overhead cost that must be recovered, as all costs of doing business are. MPC does have an option, they can sell the coal mine which would make the price of coal being included into the rate base automatic, or at least being perceived as the cost of doing business. The real issue at hand is the mine is owned by Western Energy which is a subsidiary of the MPC and the PSC did not condone the idea of the MPC selling coal to itself. If sale of the mine is the MPCs only way of getting the 7 million dollars into the rate base then you can rest assured the sale will probably happen.

You are probably aware that MPC has historically been one of Montanas largest and most benevolent employers and that they still are. To force the MPC into a sale they would rather not make and a sale that actually would benefit no one would be a travesty of the most naive kind. I urge you to support the intelligent legislation of Senate Bill 284. I am

Sincerely,



Stan I. Dupree
Bus. Mgr./ Fin. Sec.
Local 44, IBEW.